STATE OF ILLINOIS)
) SS.
COUNTY OF HENRY)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carol Neal,

Petitioner,

14IWCC0011

vs.

NO: 11 WC 09311

State of Illinois/East Moline Correctional Facility,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, and permanency, hereby reverses the Arbitrator's Decision and finds that Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment on October 25, 2010. The Commission vacates the Arbitrator's award of benefits and denies Petitioner's claim for benefits under the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner started working for Respondent as a correctional nurse in 2004. (T.8-9)

2. On October 25, 2010, Petitioner parked in the parking lot at the bottom of the hill because she had been told she could not park "on the hill." (T.9,12) According to Petitioner, there are two paths towards Respondent's main building from the parking area at the bottom of the hill where she had parked: "go up the road where also the cars drive up to get to work or the grassy hill." (T.9-10) According to Petitioner, the roadway used to walk to the main building is the same roadway used by vehicles to enter and exit the prison once inside the gate. (T.15) Petitioner

testified that some people drive "a little too fast and honk at you" on the roadway. (T.18) Petitioner testified that the parking area at the top of the hill contained designated parking for wardens, doctors, and administration people, as well as for the general public. (T.39)

On cross-examination, Petitioner testified that she continues to, at times, park at the bottom of the hill. (T.42) Petitioner explained that she and her husband, who also works for Respondent, will sometimes switch vehicles at work and the vehicles will be parked at the bottom of the hill. (T.42) Petitioner also testified that she has continued to use the grassy hill path to get to work. (T.42) When questioned by the Arbitrator, Petitioner admitted that both Respondent's employees and the general public park at the bottom of the hill. (T.54)

3. Petitioner testified that on October 25, 2010, she chose to go up the grassy hill path to get to work because it "seemed easier and safer." (T.9-10) Petitioner explained that she walked on the worn path on the hill and noted that the ground was damp and that there were wet spots along the path. (T.9-10) Petitioner testified that as she walked up the hill she had to "catch" herself a "couple of times" with her hand and knee. (T.9-10) Petitioner explained that her feet "slid out from underneath" her a couple of times and when she landed she "kind of landed on one or the other knee" but catching herself so that she did not "totally fall." (T.19) Once Petitioner reached the top of the hill, she walked on the paved walking area on the top of the hill and into the main building through the employee designated entrance. (T.9-10,16-17) As Petitioner performed her work duties, she noticed that her back ached and "could tell something was not right." (T.10-11) While reaching down to retrieve something from the bottom of a cart, Petitioner felt "excruciating" back pain and could barely move. (T.10-11) Another nurse notified Petitioner's supervisor of Petitioner's condition and the supervisor called Petitioner's husband to pick Petitioner up. (T.10-11,20-21)

4. After leaving work, Petitioner went to Dr. Sanders at Sanders Chiropractic. (T.21,PX1) Petitioner described the accident and complained of mid and low back, hip, thigh, and leg pain. (PX1) Dr. Sanders took x-rays of the lumbar spine that showed moderate hyperlordotic lumbar sagittal curature, mid left-sided lumbar spinous rotation, compression fracture at L5 with right lateral wedging, moderate disc space narrowing at L4-L5 & L5-S1, posterior disc wedging at L5-S1, and retro vertebral body listhesis at L5. Dr. Sanders ordered an MRI, provided chiropractic treatment, and took Petitioner off work.

5. Petitioner then went to her primary care physician, Julianna Castro, APN. (T.22-23,PX2) Again, Petitioner described the accident and complained of severe low back pain. (PX2) Julianna Castro diagnosed Petitioner as having low back pain and radiculopathy and prescribed pain medication.

6. On October 26, 2010, Petitioner completed an accident report explaining that she sustained injuries to her mid and low back, hips and legs while "walking up the hill to come into work. The ground was wet + my feet slipped out from under me." (RX2) Also that day, Petitioner underwent a lumbar MRI that showed a shallow left lateral disc protrusion that narrowed the lateral recess at L3-4, a tiny annular fissure posteriorly at L4-5, and a small central disc protrusion without canal stenosis at L5-S1 where there was mild bilateral lateral recess narrowing. (PX1) The radiologists report indicates that the MRI showed lumbar spine degenerative disc disease primarily at L4 and L5 with an annular rent involving the posterior

aspect of the L4 disc and diffuse broad-based posterior annular protrusion at L5-S1 extending into the left neural foramen with suspicion of contact with the left L5 nerve. (PX1)

7. Petitioner underwent conservative treatment with Dr. Sanders and Julianna Castro from October 26, 2010 through January 14, 2011. (PX1,PX2) Petitioner continued to complain of mild and low back pain with radiation into the lower extremities throughout her treatment.

8. On December 13, 2010, Petitioner was walking out of work and noticed that the snow and ice in the parking lot had not been removed. (T.26-27) As Petitioner was getting into her car, she slipped and fell, hitting her knee on the car door. (T.26-27) According to Petitioner, her treatment did not change as a result of this fall. (T.27)

9. On January 5, 2011, Petitioner saw Dr. Karuparthy for pain management. (PX5) Dr. Karuparthy administered trigger point injections and a facet/medial branch injection on the left side at the L4-L5 levels, a sacroiliac joint injection on the left side, and trigger point injections in the low back bilaterally. The injections failed to provide Petitioner substantial lasting relief.

10. On August 31, 2011, Petitioner saw Dr. Miller who administered a left L5-S1 intralaminar epidural steroid injection. (PX4)

11. Petitioner underwent an EMG/NCV study on September 1, 2011, the results of which revealed incomplete evidence of L5 radiculopathy on the left. (PX4) After reviewing the results of the study, Dr. Miller recommended continued management of symptoms with conservative treatment, including physical therapy, injections, lumbar traction and muscle stimulator. On October 20, 2011, Petitioner reported 75% improvement in her symptoms following the August 31, 2011 injection.

12. On November 9, 2011, Dr. Miller administered a midline L5-S1 intralaminar epidural steroid injection. On January 31, 2012, Dr. Miller diagnosed Petitioner as having chronic low back pain and myofascial pain of the hip girdles and low back. (PX4) Dr. Miller counseled Petitioner on performing a stretching and exercise regimen daily, prescribed pain medication, and recommended that Petitioner return for "a more focused osteopathic structural examination and manipulation treatment." On February 20, 2012, Dr. Miller recommended and administered osteopathic manipulation procedure. (PX4)

13. At the arbitration hearing, Petitioner complained of ongoing back pain and problems. (T.31-33) Petitioner also testified to difficulty performing activities of daily living as well as her work duties as a result of her continued back pain and problems. (T.31-33,37-38)

In reversing the Arbitrator's decision that Petitioner sustained a compensable work accident on October 25, 2010, the Commission relies on *Dodson v. Industrial Commission*, 308 Ill.App.3d 572 (1999). In *Dodson*, the claimant was heading to her vehicle after work and left the paved walkway to walk across the grassy slope, which provided a more direct route to her car. *Dodson*, 308 Ill.App.3d at 573. While walking on the glassy slope, the claimant slipped on the wet grass and broke her ankle. *Id.* The court held that claimant's injuries did not arise out of her employment and explained that:

> "[s]he chose to take a shortcut to her vehicle and walked down a grassy slope that was ostensibly wet and icy from rain. Claimant did so instead of proceeding down the unobstructed stairs and sidewalk, both of which the employer provided for employees' ingress and egress. This was a voluntary decision that unnecessarily exposed her to a danger entirely separate from her employment responsibilities. Moreover, her choice was personal in nature, designed to serve her own convenience and not the interests of employer." *Dodson*, 308 Ill.App.3d at 576-577.

We find the facts in the case at bar analogous to *Dodson*. In the case at bar, Petitioner had two choices as to how to get to Respondent's main building: 1) the roadway in the parking lot; or 2) the grassy hill. Petitioner chose to take the grassy hill, which she admitted was damp and contained wet spots throughout. (T.9-10) Petitioner defended the choice to use the grassy hill path instead of the roadway by claiming that the grassy hill was safer than the roadway and that she had witnessed people using the grassy hill path daily. (T.17-18) Furthermore, According to Petitioner, people would drive their cars "a little too fast" on the roadway. (T.18) Petitioner explained that cars would "zoom" by her and "skid their tires as they are going around the corner." (T.40-41)

The Commission does not find Petitioner's claim that the roadway is dangerous persuasive. First, the Commission notes that Petitioner admitted that she did not know of anyone who had been hit by a car on the roadway. (T.41) Furthermore, Petitioner testified that the roadway that pedestrians use to get to the main building is the same roadway vehicles use to enter and exit the prison once inside the gate. (T.15) The Commission finds that any roadways inside the gate are essentially no different than the roadways usually traversed in parking lots. This view is supported by Petitioner's testimony that she has witnessed other people walk on the roadway as well as the grassy hill. (T.44) The Commission further notes that Petitioner admitted that despite her accident, she has continued to use the grassy hill path to get to work. (T.42)

The evidence shows that while Respondent may control where Petitioner can and cannot park, Respondent does not control what pathway Petitioner takes to get to work. Petitioner admitted that she has options as to how to get to work. The Commission finds that on October 25, 2010, Petitioner chose to take a wet, grassy hill to get to work. There is nothing in the record to support Petitioner's claim that the roadway is dangerous and Petitioner admitted at hearing that the grassy hill "seemed easier" to her. As in *Dodson*, Petitioner's voluntary decision to take the grassy hill path exposed her to a danger entirely separate from her employment responsibilities.

The Commission also relies on *Orsini v. Industrial Commission*, 117 Ill.2d 38, 45 (1987), in which the Illinois Supreme Court explained that:

> "[f]or an injury to have arisen out of the employment, risk of injury must be a risk peculiar to the work or a risk to

> which the employee is exposed to a greater degree than the general public by reason of his employment."

Petitioner testified that the parking area at the bottom of the hill is for Respondent's employees and the general public. (T.54) Petitioner is exposed to the same exact pathways as the general public to get to Respondent's main building. Therefore, Petitioner's injury did not arise from a risk to which she was exposed to a greater degree that the general public.

Based on the testimony and evidence presented, as well as the case law on the issue, the Commission finds that Petitioner failed to establish that her October 25, 2010 accident arose out of and in the course of her employment with Respondent. Therefore, the Commission hereby reverses the Arbitrator's Decision and vacates the Arbitrator's award of benefits. Finally, the Commission notes that on November 13, 2013, Respondent filed a Request for Special Findings by the Commission. The Commission denies Respondent's request.

IT IS THEREFORE ORDERED BY THE COMMISSION that that the Decision of the Arbitrator, filed on December 5, 2012, is reversed. Petitioner's claim for benefits is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all additional amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: JAN 0 9 2014
MJB/ell
o-11/20/13
68

Michael J. Brennan

Mario Basurto

DISSENT

I respectfully dissent from the majority decision and would affirm the Arbitrator's decision in its entirety. Petitioner is employed by the State of Illinois as a nurse at the East Moline Correctional Facility. On the date of incident, Petitioner slipped while walking up a damp grassy hill path leading from the parking lot to the Employer's main building (Administration Building). Petitioner's unrebutted testimony was that there were two means of reaching the Employer's facility from the lower parking lot; the grassy foot path, and the main road leading into the facility. Further, petitioner testified that the grassy foot path "seemed easier and safer" than walking along side the road.

The majority relies on Dodson v. Industrial Commission, 308 Ill.App.3d 572 (1999) in reversing the Arbitrator's decision that Petitioner sustained a compensable work accident. In Dodson, the Claimant was heading to her vehicle after work and left the paved walkway to walk across a grassy slope, which provided a more direct route to her car. Dodson, 308 Ill.App 3d at 573. While walking on the grassy slope, the claimant slipped on the wet grass and broke her ankle. *Id.* The court held that the claimant's injuries did not arise out of her employment and

explained that the Petitioner exercised "a voluntary decision that unnecessarily exposed her to a danger entirely separate from her employment responsibilities. Moreover, her choice was personal in nature, designed to serve her own convenience and not the interests of the employer."

The majority finds the facts in the case at bar analogous to Dodson. However, the case at bar is distinguishable from Dodson. In Dodson, the employer provided a sidewalk for employees to walk on for ingress and egress. In the case at bar, no such employer provided sidewalk exists. In fact, the Employer acknowledged that the paved surfaced it provides for ingress and egress is a roadway. Petitioner's employer provided her with two poor choices for ingress and egress to its facility from the lower parking lot; a worn footpath up a grassy hill or a roadway which carries vehicular traffic into and between the various correctional center buildings. Although the majority equates the roadway inside the employer's facility to that of a parking lot, it does not make it less dangerous than traversing a worn grassy footpath.

The case at bar is more analogous to Huizar v. Swords Veneer and Lumbar, 01 WC 1620, relied upon by the arbitrator to find accident. In Huizar, the Commission affirmed the Arbitrator's finding that the employer failed to provide a clear, unobstructed way "by which the claimant could have avoided the snowy area on which she fell" and that the claimant's decision to walk over the mound on the premises "was not unreasonable or unsafe in comparison to alternative routes." In the case at bar, Petitioner's decision to use the footpath was not unreasonable or unsafe in comparison to the alternative route along the roadway. Petitioner's choice to use the hill to get to the Administration Building did not constitute a personal risk as claimed by the majority, but a risk to which Petitioner was exposed to a greater degree than the general public. There was nothing unreasonable or personal about Petitioner's use of the hill to get to the Administration Building considering the employer does not provide a specific walkway from the parking lot to the Administration Building. Therefore, Petitioner's use of the hill constitutes a risk to which she was exposed to a greater degree that the general public due to her employment. Accordingly, based upon the above, the Arbitrator's decision should be affirmed in its entirety.

David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carshima Clayton,

Petitioner,

14IWCC0012

vs.

NO: 08 WC 40986

Illinois Department of Rehabilitation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the only issue of nature and extent of permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In modifying the Decision of the Arbitrator, the Commission concludes Petitioner exaggerated the true nature of her physical condition at the time of her arbitration hearing on May 13, 2013, to such a degree that the conferred permanent partial disability benefits are found to be excessive.

At her May 13, 2013, arbitration hearing, Petitioner testified as to her then-present symptoms, notably of being in pain at the hearing; of pain being brought on by prolonged walking and sitting as well as by stair climbing; of losing her balance; of experiencing a sensation "like veins bursting" in her leg; of her leg swelling up; and of her having to sit of an hour or two before going to work due to the severity of the pain. The Commission takes notice that, despite what would be construed as conditions that would merit constant medical attention, Petitioner's records indicate that she was last seen by her orthopedic physician in December 2011 and by her pain management physician on March 8, 2011.

14IWCC0012

The Commission also finds Petitioner's as-testified-to condition as of May 13, 2013, represents a dramatic worsening of her condition as compared to how she was found to be upon completion of physical therapy on December 8, 2011, a worsening to such a degree that one would expect a reasonable person would have sought medical intervention. At the time of her December 8, 2011, discharge from physical therapy, Petitioner demonstrated good tolerance to treatment and performed all exercises without increased pain and complained only of having difficulty when reaching for items that were at a low height. After physical therapy, Petitioner presented for a KEY Functional assessment. The assessment was deemed to be a valid representation of her capabilities and determined that Petitioner would be able to work at sedentary-light physical demand level. Petitioner's as-testified-to symptoms presumptively manifested themselves sometime after December 2011 as they were not evident at the time she engaged in physical therapy or when she participated in the functional assessment. The Commission finds it incredible that she chose to live with the worsening symptoms rather than attempt to reverse the claimed worsening of her physical self.

The evidence the Commission finds most telling with respect to Petitioner's claimed condition is the apparent misrepresentations she made to her treating physicians during the time she actively treated her symptoms. It is noted that Petitioner repeatedly told Dr. Rivera that she was scheduled to follow-up with Dr. Templin for a surgical consultation, only for it to be later recorded that she never scheduled any such appointment with Dr. Templin. Similarly, Petitioner was recorded as informing Dr. Trksak that she was going to seek chiropractic care at the Chicago Spine Institute, but there was no evidence that she actually sought treatment there. Also noted was that Petitioner failed to inform Dr. Patel, a successor physician to Dr. Rivera, that she had been seen by his colleague, Dr. Anwar, weeks earlier and that Dr. Anwar discharged her from his care after she had tested negative for opiates despite being prescribed both hydrocodone and OxyContin for approximately one year and after Petitioner initially failed to provide a urine sample for a toxicology test he asked be administered and then attempted to obtain a urine sample from a third person. The Commission finds Petitioner's behavior inapposite for one seeking relief of debilitating pain.

The Commission recognizes Petitioner was involved in motor vehicle accident while engaged in her normal work activities as a Certified Nurse's Assistant on August 26, 2008, that resulted in injuries that were conservatively treated. The Commission, however, also recognizes Petitioner engaged in behavior that leads it to conclude that she exaggerated her condition, as noted extensively above, for reasons known only to her. The Commission, accordingly, reduces the permanent partial disability award to 22-1/2% loss of use of a person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $171.89 per week for a period of 177-6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $171.89 per week for a period of weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 22-1/2% loss of use of a person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

14IWCC0012

the sum of $52,155.38 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: JAN 10 2014
KWL/mav
O: 12/3/13
42

Kevin W. Lamborn

Daniel R. Donohoo

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0012

CLAYTON, CARMISHA
Employee/Petitioner

Case# 08WC040986

ILLINOIS DEPT OF REHABILITATION
Employer/Respondent

On 6/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0274 HORWITZ HORWITZ & ASSOC
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25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

0639 ASSISTANT ATTORNEY GENERAL
CHARLENE C COPELAND
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
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SPRINGFIELD, IL 62794-9208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JUN 7 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Will)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0012

Carmisha Clayton
Employee/Petitioner

v.

Illinois Dept. of Rehabilitation
Employer/Respondent

Case # 08 WC 40986

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of **New Lenox**, on **5/13/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **8/26/08**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$2,647.10**; the average weekly wage was **$171.89**.

On the date of accident, Petitioner was **36** years of age, ***single*** with **1** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$44,228.91** for TTD and maintenance.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $171.89/week for 177 6/7 weeks, commencing 9/3/08 through 1/30/12, as provided in Section 8(b) of the Act. Respondent to receive credit for all sums previously paid hereunder.

Maintenance

Respondent shall pay Petitioner maintenance benefits of $171.89/week for 41 weeks, commencing 1/31/12 through 11/12/12, as provided in Section 8(a) of the Act. Respondent to receive credit for all sums previously paid hereunder.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $52,155.38, as provided in Section 8(a) of the Act. Respondent to receive credit for all sums previously paid hereunder.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of $171.89/week for 150 weeks, because the injuries sustained caused the 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

14IWCC0012

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Robert E Dalton
Signature of Arbitrator

June 3, 2013
Date

JUN - 7 2013

FACTS

On the date of accident, 8/26/08, Ms. Clayton was working as a Certified Nurse's Assistant for the Illinois Department of Rehabilitation. She was involved in a motor vehicle accident while transporting a patient. She was restrained in the front passenger seat. Her knees hit the dashboard and her head hit the windshield. Ms. Clayton lost consciousness for a few minutes during the accident. After the accident, there was a "sunburst" in the windshield on the front passenger side.

At 12:08 pm that day, Ms. Clayton arrived via ambulance to the emergency department of Provena Saint Joseph Medical Center. She complained of headache, neck pain, back pain and right sided elbow pain after a motor vehicle accident. She was seen by Dr. Andrew Zwolski. She underwent a brain CT, without contrast. Impression: Unremarkable noninfusion CT study of the brain.

Right elbow X-rays were taken. Impression: No discrete acute traumatic bone change is observed in the right elbow Early arthritic changes and mild soft tissue swelling present. If symptoms persist may obtain a follow-up examination in two weeks.

She underwent a cervical spine CT study. Impression: Unremarkable CT examination of the cervical spine.

Chest X-rays and thoracic spine X-rays were normal. Diagnosis was contusion to elbow headache, neck and back strain. She was treated with acetaminophen, and hydrocodone. She was also prescribed Vicodin. PX2

On 8/28/08 Dr. H. A. Metcalf at Millenium Medical Services ordered physical therapy two to three times a week until further notice to treat her injuries post motor vehicle accident. Diagnosis was :

1. Post motor vehicle accident right upper extremity sensory neuralgia.

2. Post motor vehicle accident acute cervical sprain.

3. Post motor vehicle accident acute lumbar sprain.

4. Post motor vehicle accident bilateral knee contusion.

5. Post motor vehicle accident concussive syndrome.

On 9/2/08 Dr. Metcalf provided the following work restrictions: No lifting over five pounds; stooping or bending as tolerated; limit continuous walking or standing to fifteen minutes per hour; limited stair climbing; and no overhead reaching.

On 9/9/08 Dr. Metcalf completed a Disability Certificate restricting Ms. Clayton from all work duties from September 2, 2008 until further notice.

On 9/10/08 Ms. Clayton underwent CT scans at Fox Valley Imaging. PX4. The CT scan of the cervical spine was normal. The CT scan of the lumbar spine revealed severe degenerative disc disease at L5-S1 with a large osteophyte – hard disc in the midline at L5-S1. The CT scan of the head was normal.

On 9/25/08 Dr. Metcalf completed a Physicians and Surgeons Report stating that Ms. Clayton was injured while working, and that she required further treatment.

On 9/30/08 Dr. Metcalf wrote that Ms. Clayton was receiving therapy three to four times per week and was not working at that time. He planned for her to see a pain management physician for assessment and treatment.

On 11/7/08 Dr. Paul Trksak at Hinsdale Orthopaedic examined Ms. Clayton and noted her motor vehicle accident on August 27, 2008. Dr. Trksak restricted Ms. Clayton to: no prolonged walking, standing or sitting; no bending or lifting greater than five pounds; restricted crawling or kneeling; no operating moving vehicles; no overhead lifting. PX5.

Dr. Teksak explained that Ms. Clayton was on medication that would affect her ability to work safely. He stated that her injuries were work related. His impression was:

1. Cervical strain

2. Lumbosacral strain.

3. Contusion of both knees.

4. Sprain of both wrists.

He recommended physical therapy three times a week for four weeks to treat her injuries. He prescribed Motrin and Parafon Forte DSC.

On 11/17/08 Ms. Clayton underwent an initial evaluation for physical therapy to treat lumbar and cervical strain at Premier Physical Therapy.

On 12/19/08 Dr. Trksak placed Ms. Clayton off work and ordered cervical, thoracic and lumbar spine MRIs. He continued physical therapy three times a week for three weeks to treat cervical and lumbosacral strain, and he prescribed Relafen 1500.

On 1/16/09 Ms. Clayton underwent an MRI of the lumbar spine at Future Diagnostics Group. The MRI revealed the following:

1. The dominant finding was a large central disc herniation at the L5-S1 level. This was approximately 5.5 mm in depth and likely contributing to a bilateral S1 radiculopathy, right greater than left.

2. Degenerative changes.

On 1/16/09 Dr. Trksak continued Ms. Clayton off work and ordered a cervical spinal cord CT scan as Ms. Clayton was unable to undergo a cervical MRI due to claustrophobia. PX5. Dr. Trksak reviewed Ms. Clayton's lumbar spine MRI taken that day and noted it revealed evidence of a herniated disc at L5-S1. Dr. Trksak referred Ms. Clayton to Dr. Templin to evaluate if she was a surgical candidate.

On 2/2/09 Dr. Cary Templin at Hinsdale Orthopaedic examined Ms. Clayton and noted her work injury. PX5. Ms. Clayton's medications included Lisinopril, Metformin, Norco and Flexeril. Dr. Templin continued Ms. Clayton off work. He referred her to pain management for a trial of facet block at the cervical spine, and epidural steroid injection at the L5-S1 level.

On 2/16/09 Ms. Clayton was examined and underwent a first interlaminar L5/S1 epidural steroid injection performed by Dr. Anthony Rivera at Health Benefits Pain Management. PX7. Dr. Rivera discontinued Ms. Clayton's previous pain medications and prescribed Percocet, Naprelan, and Lidoderm patches.

On 3/16/09 Ms. Clayton reported great relief after the first injection, and underwent a second interlaminar L5/S1 epidural steroid injection performed by Dr. Anthony Rivera at Health Benefits Pain Management. PX7. Dr. Rivera continued Ms. Clayton off work and continued her pain medications.

On 4/6/09 Dr. Rivera performed a third L5/S1 epidural steroid injection. He continued Ms. Clayton off work and continued her pain medications. His diagnosis at that time:

1. Lumbar radiculopathy.

2. Lumbar disc herniation at L5-S1.

3. Neuropathic pain.

4. Cervical facet arthropathy.

On 5/4/09 Dr. Rivera continued Ms. Clayton off work. He discontinued Naprelan and Lidoderm. He prescribed Opana ER 5 mg and continued Percocet.

On 6/29/09 Ms. Clayton did not obtain lasting relief from her epidural steroid injections. Dr. Rivera referred Ms. Clayton to a spine surgeon for a second opinion and continued Ms. Clayton off work.

On 7/27/09 Dr. Rivera continued Ms. Clayton off work. Diagnosis was :

1. Lumbar radiculopathy.

2. Lumbar disc herniation at L5-S1.

3. Neuropathic pain.

4. Cervical facet arthropathy.

His assessmentwas that Petitioner was a 37-year-old female who was being followed for chronic neck and low back pain. The low back pain appeared to be secondary to possible lumbar radiculopathy issue due to a disc herniation.Surgical second opinion was still currently pending. In regards to her pain medication regimen since it was not controlling her symptoms, he stated that he would increase her medications for better pain control.

On 8/10/09 Dr. Rivera continued Ms. Clayton off work.

On 8/14/09 respondent obtained a section 12 exam. PX17. Causation was explained to be aggravation of pre-existing condition. Dr. Howard An gave a 10 lb. restriction, sedentary and stated the following:

"Summary: The patient's current diagnosis is cervical strain which has been improving and herniated disc at L5-S1 causing back and some radicular symptoms. I believe that the current condition of the disc problem is probably pre-existing in nature but the work injury of a motor vehicle accident aggravated the preexisting condition beyond normal progression or caused the herniation. This is based on the patient's history in that there are no significant back or neck problems prior to the alleged incident on August 26, 2008. The treatment that has been given so far has been reasonable including medication, injections and physical therapy. The patient also has some facet osteoarthritis at L5-Sl which may be also causing back pain at this time. Currently her main problem is low back pain rather than leg pain; therefore the herniation may be improving at this point."

"Recommendation: My recommendation for treatment is to continue conservative modalities with pain management, a weight loss program and strengthening exercises. Because she went through these modalities before it might be a good to refer her to a physical medicine rehabilitation specialist. I would be glad to see the patient if her condition persists despite further conservative care in about two months time. I would be glad to render more opinions at that time. I believe that the patient is able to work at this time; however, I recommend sedentary work of lifting no greater than 10 pounds and avoid frequent twisting and bending of the back. These

restrictions will be in place for two months time. If you have any further specific questions, please feel free to contact me again."

On 9/2/09 Dr. Rivera restricted Ms. Clayton to sedentary work, with no bending or lifting greater than ten pounds. He referred her to a spine surgeon for surgical consultation and ordered lumbar spine X-rays, lumbar MRI, and EMG and NCS of the lower extremities. Dr. Rivera discontinued Percocet and started OxyContin 20 mg and Norco 10/325.

On 9/23/09 Dr. Rivera prescribed the sleeping aid Restoril 15 mg to help with insomnia and placed Ms. Clayton off work.

On 10/19/09 Ms. Clayton underwent an EMG and NCS studies performed by Dr. Rivera at Health Benefits Pain Management. PX7. The EMG was read as an abnormal electrodiagnostic study with electrodiagnostic evidence of chronic denervation noted in the lower extremities in the L5/S1 innervated muscles. No evidence of demylinating or axonal neuropathy components involving the lower extremities was found. Evidence of a chronic lumbar motor radiculopathy noted on was noted on the exam of the L5/S1 myotome. Of note, EMG unable to detect small sensory fibers and therefore clinical correlation is recommended.

Dr. Rivera continued Ms. Clayton off work.

On 11/16/09 Dr. Rivera assessed: "This is a 37-year-old female who is being followed for chronic low back pain. Working diagnosis is a lumbar radiculopathy issue secondary to disc herniation at the L5-S1 level. At this time, she is attempting to control her pain symptoms with medication. Given the prolonged nature of her pain symptoms and the fact that it has not improved, will recommend that she followup with a surgeon to consider possible surgical options. I discussed the options of increasing her pain medication for better pain control, but at this time the patient wishes to hold off on this if possible."

He continued Ms. Clayton off work.

On 11/17/09 Ms. Clayton underwent a lumbar MRI and X-rays at Future Diagnostics Group.

Findings were as follows:

1. No significant change in central disc extrusion at L5-S1.

2. Degenerative changes at L5-S1 with mild bilateral neural foraminal stenosis at this level as well.

Impression of Lumbar X-ray: Degenerative changes at L5-S1.

On 12/14/09 Dr. Rivera continued Ms. Clayton off work. Diagnosis did not change.

Dr. Rivera increased Ms. Clayton's pain medication and added the following neuropathic pain medication:

1. OxyContin 30 mg p.o. q.12h. (#60).

2. Norco 10/325 mg p.o. t.i.d. p.r.n. (#90).

3. Restoril 15 mg p.o. q.h.s. p.r.n. (#20).

4. Neurontin 600 mg p.o. q.h.s. x7 days then increase to two pills p.o. q.h.s. (#50).

On 1/13/10 Dr. Rivera increased Ms. Clayton's prescription for the long lasting opioid OxyContin to 40 mg and he continued Ms. Clayton off work.

On 2/10/10 Dr. Rivera examined Ms. Clayton and continued her off work.

On 3/10/10 Dr. Rivera continued Ms. Clayton's medications and continued her off work.

On 4/2/10 Ms. Clayton was examined by Dr. Cary Templin, a specialist in spinal disorders and spinal surgery. Dr. Templin explained that, although surgery was an option, he did not feel Ms. Clayton was a prime candidate for a transforaminal interbody lumbar fusion. Due to her morbid obesity, he believed the surgery would be quite risky for her.

He felt that Ms. Clayton could work with a ten pound restriction, and sitting at least five minutes every hour. He noted that her pain medications would restrict her ability to work and deferred her restrictions relating to medication to whoever was prescribing narcotic pain medication. He recommended that she undergo a functional capacity evaluation.

On 4/12/10 Ms. Clayton was continued off work. Dr. Rivera wrote, "She has undergone multiple conservative treatment options such as physical therapy and interventional procedures and it is currently being controlled with pain medication. At this time since surgery is not recommended, I would state that the patient is at maximum medical improvement. She will require long term pain management, which may include followup visits for pain medication adjustment and/or interventional procedures. It is also possible in the future if symptoms became severe enough, she may reconsider her surgical options. At this time, will place the patient at a permanent partial disability. Will recommend basically a sedentary job with no lifting."

Dr. Rivera continued Ms. Clayton's medications, and continued her off work.

5/17/10 Petitioner was seen again by Dr. Rivera whose impressions at the time were:

1. Lumbar radiculopathy.

2. Lumbar disc herniation at L5-S1.

3. Neuropathic pain.

4. Cervical facet arthropathy.

Ms. Clayton wanted to continue with conservative measures at that time. Dr. Rivera continued Ms. Clayton off work and ordered a functional capacity evaluation. He wrote prescriptions for Oxycontin 40 mg, Norco, Restoril, Neurontin, Lidoderm.

Dr. Rivera stated that Ms. Clayton was at maximum medical improvement without surgical intervention. He placed her at permanent partial disability, and explained that she would require long term pain management.

On 5/25/10 Ms. Clayton tried to undergo a KEY functional capacity evaluation at ATI Physical Therapy. She was unable to complete the evaluation secondary to pain and an assessment of her physical capabilities could not be established.

On 6/14/10 Dr. Rivera noted that Ms. Clayton was unable to tolerate the functional capacity evaluation due to increased pain. He recommended sedentary work with the opportunity to change positions every hour to decrease some of her pain issues. Dr. Rivera continued Ms. Clayton off work and renewed her prescription for Oxycontin.

On 7/13/10 Dr. Zaki Anwar at Health Benefits Pain Management continued Ms. Clayton off work and renewed her prescriptions. His findings were of

1. Acute lumbar radiculitis.

2. Sciatica.

3. Extruded lumbar disc at L5-S1 level that is 5.5 mm in herniation.

4. Status post epidural injections and physical therapy without any significant relief.

5. Neurosurgery recommendation is not to proceed with the surgery due to her weight and a short stature as well as the nature of the injury at this point.

6. Opioid dependency issue with Oxycontin and Norco at this point.

7. Multiple conservative treatment by Dr. Cary Templin, in the past without any significant relief.

8. The patient at a permanent partial disability at this point.

9. Functional capacity evaluation was done in which the patient was unable to do the test and at that time she was given a sedentary job that allows her to change positions to help decrease some of her pain issues.

Dr. Anwar recommended diagnostic lumbar discography and a possible microdiscetomy.

On 8/24/10 Dr. Udit Patel at Health Benefits Pain Management restricted Ms. Clayton to sedentary duty.

He prescribed Norco 10/325, Oxycontin 20 mg, and Lidoderm 5% patch.

On 9/21/10 Dr. Patel placed Ms. Clayton off work and referred her to a spine surgeon for a second opinion.

He found that Petitioner's condition was as follows:

1. Status post work injury via a motor vehicle accident on August 08, 2008.

2. Work status sedentary level.

3. Chronic opioid therapy and chronic pain.

4. Extruded disc at L5-S1 level that is 5.5 mm in herniation.

5. Review of chart said neurosurgical recommendation is not to proceed with surgery.

Dr. Patel renewed prescriptions for Norco 10/325, Oxycontin 20 mg, and Lidoderm 5% patch.

On 10/29/10 Ms. Clayton was examined by Dr. Templin at Hinsdale Orthopaedics. He reviewed her MRI. Again it showed degenerative changes at L5S1 with severe loss of disc height, central disc protrusion narrowing the lateral recess on the right and the left. PX5.

He prescribed a discogram at L3-4, L4-5, and L5-S1 to determine if L5-S1 was the causative factor in her pain. If it was, he would consider performing a TLIF. He wrote that he explained to her because of her obesity she would be at increased risk for complications from such a procedure. He returned her to work same day with restrictions to no bending or lifting greater than ten pounds; no overhead lifting; sitting five minutes every hour.

On 11/2/10 Dr. Patel at Health Benefits Pain Management referred Ms. Clayton to a pain clinic.

On 12/21/10 Dr. Udit Patel continued Ms. Clayton off work.

On 12/21/10 respondent obtained a second section 12 exam with Dr. Howard An at Midwest Orthopaedics at Rush. Impression: Persistent axial back pain with some radicular symptoms due to a centrally herniated disc as well as a significant degenerative disc at the L5-S1 level. PX17

Dr. An did not recommend a diskogram as he believed the L5-S1 was her main problem at that time. He believed she could become a surgical candidate for a diskectomy and fusion at L5-S1. He thought it would be reasonable to first try a third epidural steroid injection, and to continue an exercise program. But he doubted that further conservative treatment would improve her symptoms. Diagnosis was herniated disc at L5-S1 with advanced disc degeneration at L5-S1 causing significant diskogenic back pain as well as radicular pain symptoms more on the right compared to the left side.

Dr. An believed Ms. Clayton's condition was pre-existing in nature but the injury on August 26, 2008 aggravated that condition beyond normal progression. He did not believe she could work as a CNA in her condition. He would restrict her to sedentary duty with no lifting greater than ten pounds and avoidance of frequent bending and twisting of the back. Without surgery, he felt she would plateau with maximum medical improvement in four weeks.

On 3/8/11 Dr. Udit Patel at Health Benefits Pain Management placed Ms. Clayton on light duty. He administered an epidural steroid injection at the bilateral L5 spinal nerve level.

On 3/22/11 Dr. Patel noted that Ms. Clayton's recent epidural steroid injection at L5 only afforded one day of relief. He believed the next step for Ms. Clayton was surgery at the L5-S1 level.

Impression:

1. Status post work injury via a motor vehicle accident on August 08, 2008.

2. Work status at sedentary level.

3. Extruded disc at the L5-S1 level.

4. Status post L5 transforaminal epidural steroid injection done on both sides on March 08, 2011, with no long term relief of her pain.

Dr. Patel referred Ms. Clayton to Dr. Templin to discuss surgery.

On 4/15/11 Ms. Clayton was examined by Dr. Cary Templin. The diagnosis was LS-S1 degenerative disk disease and axial instability with discogenic low back pain. Dr. Templin recommended a L5-S1 TLIF but Ms. Clayton wanted to try chiropractic care first. Dr. Templin prescribed two months of chiropractic care to see if that would improve her symptoms. Dr. Templin placed Ms. Clayton off work.

On 9/20/11 Ms. Clayton was examined by Dr. Cary Templin. "Assessment and Plan: For Ms. Clayton, options would be for vocational rehabilitation and continued nonoperative management of her back. I do think she would be a good candidate for surgery for a 5-1 fusion, and I discussed this with her. Given that there are no problems elsewhere in the spine with significant degenerative change, I think she has a good chance to benefit from a fusion at that level assuming that it can be done without complication and I discussed this with her. She will consider it in the meantime given that she has not done a full course of physical therapy. We will start her in physical therapy for four weeks, transition to a functional capacity evaluation. If she opts against surgery, I will see her back in four weeks time for further discussion of this."

Dr. Templin completed a Medical Consultant's Review Sheet recommending a fusion at L5-S1, or physical therapy and a functional capacity evaluation. He also completed a work restriction summary returning Ms. Clayton to work next day with the following restrictions:

Frequent sitting; occasional standing, walking, squatting, climbing stairs; no ladder climbing.

Frequent lifting up to ten pounds; occasional lifting no greater than twenty pounds.

Frequent lifting waist to shoulder up to ten pounds; no lifting waist to shoulder over ten pounds.

No lifting shoulder to overhead.

Frequent carrying waist to shoulder level up to ten pounds. No carrying waist to shoulder over ten pounds.

Light grasping with either hand permitted.

Limited pushing and pulling weight.

Using feet and legs in operation of foot controls permitted.

Dr. Templin prescribed physical therapy to treat degenerative disc disease at L5-S1 two to three times a week for four to six weeks.

On 10/3/11 PT Ms. Clayton started physical therapy to treat her lumbar degenerative disc disease at L5-S1, at ATI Physical Therapy. She continued to attend as prescribed on October 6, 13, 14, 20, 21, 25, 27 and November 1, 3, 4, 8, 11, 30 and December 2, 5, 8.

On 12/13/11 Dr. Templin noted: "For Carmisha at this point, she does not want to do work conditioning, therefore, I would do a functional capacity evaluation and return her to work with restrictions put forth there, and then she has reached maximum medical improvement, and will see me on an as needed basis, as she wants no further intervention. I think that is reasonable."

Dr. Templin continued Ms. Clayton's work restrictions and ordered a functional capacity evaluation.

On 1/13/12 Ms. Clayton completed a valid functional capacity evaluation at ATI Physical Therapy. She demonstrated her functional capabilities at the sedentary to light physical demand level during the assessment. She was capable of occasionally lifting 14.8 pounds at the chair-to-floor height. She was capable of occasionally lifting 20 pounds at the desk-to-chair height.

Ms. Clayton was capable of working eight hours. There was no apparent limitation to her ability to sit. She could stand for a duration of forty minutes, up to a total of four hours. She could walk for a total of eight hours with breaks.

Ms. Clayton's employment as a Certified Nurse's Assistant was considered a medium physical demand level position. Her capabilities fell below that level. The therapist recommended work hardening to reach her goal of medium physical demand level, pending medical doctor recommendations.

On 1/30/12 Dr. Templin returned Ms. Clayton to limited duties with restrictions per her functional capacity evaluation on January 13, 2012.

On 4/26/12 Ms. Clayton met with David Patsavas, M.A., C.R.C., a Vocational Rehabilitation and Career Consultant. Mr. Patsavas recommended that Ms. Clayton be assigned to a Certified Rehabilitation Consultant for the purpose of assisting her with job readiness, job seeking, and job placement activities. He further recommended that Ms. Clayton register for appropriate classes to upgrade her skill levels to be competitive in the workforce. PX13.

Ms. Clayton underwent vocational rehabilitation and acquired a job where she currently works. She testified at trial that on a day to day basis she still experiences back pain, pain in her legs, swelling in her legs, and occasional loss of balance. She cannot go upstairs or walk long distances without pain and difficulty. She also

cannot sit for long periods of time. She testified that she continues to take pain medication and use an H-wave machine.

WITH RESPECT TO ISSUE (L) WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

On the issue of nature and extent, the Arbitrator notes that under section 8(d)2 if petitioner's injuries "partially incapacitate [her] from pursuing the duties of [her] usual and customary line of employment but do not result in an impairment of earning capacity" then she "shall receive . . . compensation . . . for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability." In the present case, Ms. Clayton was unable to return to either of her former jobs for respondent, and instead has begun a new job that falls within restrictions. She continues to work at the new job despite ongoing pain and symptoms.

Ms. Clayton has restrictions placed on her activities. She is limited by her FCE to occasionally lifting 14.8 pounds at the chair-to-floor height and occasionally lifting 20 pounds at the desk-to-chair height. She can only stand for a duration of forty minutes, up to a total of four hours.

Based upon loss of her former employment and erosion of her vocational base, her permanent restrictions and the severity of the injury, as well as the need for an accommodation by her employer, the arbitrator finds that Petitioner sustained a loss of use of the person as a whole pursuant to Section 8(d)(2) of the Act to the extent of 30% thereof.

CREDIT

Having reviewed RX1 the arbitrator finds a credit of $44,228.91 for temporary total disability and maintenance paid through the date of trial. This shall be applied against the total award.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTONIO RICE,
Petitioner,
vs.

14IWCC0013

NO: 11 WC 43591

CHICAGO CONSTRUCTION SPECIALISTS, INC.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, and medical and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds that Antonio Rice failed to prove that his left knee condition is causally related to his work-related accident of November 7, 2011. The Commission modifies the Decision of the Arbitrator and finds that the Petitioner reached maximum medical improvement as of June 30, 2012. The Commission further modifies the award of temporary total disability (TTD) and awards the Petitioner TTD from November 7, 2012 through June 30, 2012. Prospective medical is denied. All else if affirmed and adopted.

Mr. Rice worked as a construction laborer since 1986. He began working for Chicago Construction Specialists, Inc. as a laborer on November 7, 2011. He had been previously laid off. On the date of the accident, Petitioner was assigned to push a wheelbarrow to the dumpster and empty it into a dumpster. T.12. The wheelbarrow weighed between 10 and 15 pounds when empty and between 80 and 90 pounds when full. He pushed the debris to the dumpster between 20 and 30 times during the first three hours of work. T.15.

As the Petitioner pushed the wheelbarrow which weighed about 100 pounds, his left knee popped. T.19. He notified his supervisor and went to the Northwestern emergency room due to the pain. This was Petitioner's first day of work.

Mr. Catarino Huizar worked with the Petitioner on the day of the accident. He testified that he did not see the accident, but knew everyone stopped working when the Petitioner was injured. T.55. He noticed that the Petitioner walked with a limp prior to the accident. T.56. Mr. Paul Barkow works as a claims consultant for Secura Insurance. He testified that he spoke with the Petitioner on November 10, 2011. He testified that the Petitioner denied any prior left knee problems. T.77.

The Petitioner testified that he had two prior arthroscopic procedures on his left knee. The first scope was in December 2010 and the second scope was in May 2011. He also had two prior scopes of the right knee. The first scope was in November 2006 and the second scope was in December 2009. He testified that he walked with a wobble because of the knee scopes. T.24.

The Petitioner's pre-existing left knee condition is well documented in the record. On December 9, 2010, Mr. Rice was seen by Dr. James Allen Hill. Petitioner was doing well until his knee popped while getting out of a chair on December 2, 2010. He had pain, swelling and walked with an antalgic gait. He had medial joint line tenderness and a positive McMurray's finding. The Petitioner lacked 5 degrees of full extension of the left knee and flexed to 120 degrees. PX.2.

On December 10, 2010, Mr. Rice was seen in the emergency room after he twisted his left knee. PX.2. On December 15, 2010, Dr. Hill noted that Petitioner still had significant pain and lacked 5 degrees of full extension. Dr. Hill recommended left knee arthroscopy. *Id.*

On December 22, 2010, Mr. Rice was seen by Dr. Dale Kaufman in the emergency room. Petitioner reported that he heard a pop in his left knee followed by a buckle while stepping out of his car. The x-ray of the left knee revealed patellofemoral arthritis with a small effusion. There was a spur formation at the anterior and posterior aspect of the superimposed knee joint. He was diagnosed with an acute knee strain. PX.1.

On December 28, 2010, Petitioner underwent left knee arthroscopy and partial medial meniscectomy. The post-operative diagnosis was left knee medial meniscal tear. PX.1. On January 27, 2011, examination revealed full range of motion of the left knee, but he still had joint line tenderness and some weakness of his knee. PX.2.

On April 27, 2011, Dr. Hill noted Petitioner was doing well until he twisted his knee. He had an antalgic gait and lacked 10 degrees of full extension. He had medial tenderness and a positive McMurray's finding. PX.2.

On May 10, 2011, Petitioner underwent left knee arthroscopy with lateral chondroplasty. The discharge diagnosis was left knee arthroscopy with lateral chondroplasty. PX.1.

Petitioner was seen by Dr. Hill on July 18, 2011 with acute left knee pain since May 18, 2011. He had an antalgic gait and diffused tenderness of the knee. He had mild degenerative changes and questionable loose bodies. Petitioner received an injection and was to follow-up in six weeks. PX.2. Petitioner followed-up on August 29, 2011 and reported that the injection helped, but he was still having discomfort. He still had an antalgic gait with diffused tenderness. He was to continue with home exercise and return in six weeks. *Id.*

On October 10, 2011, Petitioner reported to Dr. Hill that his left knee was tolerable and he returned to work with minimal problems. He had a normal gait and full range of motion of the knee with diffuse tenderness. The impression was degenerative arthritis of the left knee. He was to continue his home exercise program and return in six week. PX.2.

The Petitioner presented to Northwestern Emergency Room on November 8, 2011. Petitioner reported that he was working when his left knee popped. He was not able to put any weight on his leg and his knee was painful and swollen. Examination revealed tenderness to the medial and lateral joint line. He had pain with varus and valcus stress, and no ligament laxity. The x-ray of the left knee revealed moderate tricompartmental degenerative changes and a small suprapatellar joint effusion. He was diagnosed with knee pain. PX.1.

On November 21, 2011, Petitioner was seen by Dr. Hill. Petitioner reported his accident and that he still had pain and swelling of his left knee since the accident. Examination revealed an antalgic gait. He had full extension and only flexed to 60 degrees. There was no discernible ligamentous laxity, but he had 1+ knee effusion. Dr. Hill opined that Petitioner had pre-existing degenerative arthritis of the left knee. He further opined that the accident caused the development of new loose bodies. He was to remain off work. PX.2. Petitioner testified that this appointment was scheduled prior to the accident. T.45.

On January 10, 2012, Petitioner underwent an IME with Dr. Douglas Dirk Nelson. Dr. Nelson noted there were no loose bodies. Dr. Nelson opined that Petitioner's current condition was not causally related to the accident. The popping event was no more than a patellofemoral event related to grade IV arthritis. The work accident did not cause an aggravation or acceleration of the left knee problem. His symptoms and problems were the same as he was having in 2011. The primary cause of the ongoing symptoms was related to degenerative arthritis and he was at maximum medical improvement. The accident did not cause the need for surgical intervention. The need for knee replacement was in no way related to the accident. He could work with restrictions but was to avoid activities involving kneeling and climbing. RX.1.

Dr. Nelson testified that Petitioner's condition was not casually related to his accident because he had the same symptoms prior to the accident. RX.1. pg.18. Given the advanced arthritis, it was expected that Petitioner's condition would wax and wane. *Id.* He noted that

arthritis can be aggravated by daily activities. He recommended total knee replacement, but noted that Petitioner was going to need a total knee replacement regardless of the injury. RX.1. pg.26.

On January 27, 2012, Mr. Rice underwent a left knee arthroscopy and partial medial meniscectomy. There was no discernible ligamentous laxity. Dr. Hill testified that the tear was small and frayed, and did not have a sharp edge. PX.6. pg.36. He testified that fraying could be indicative of an acute injury or something that could have occurred over time. PX.6. pg.37. His opinion that the tear was caused by the accident was based on Petitioner's history. He had a complex tear of the posterior horn of his medial meniscus which was excised. PX.2.

On February 6, 2012, Petitioner was seen by Dr. Hill who noted Petitioner had full range of motion of his knee with a mild knee effusion. PX.2.

On February 21, 2012, Dr. Nelson authored an addendum to his January 10, 2010 IME. He opined the accident did not result in the loose bodies. The mechanism of injury was more consistent with arthritis in the patellofemoral joint and was causing the popping sensation. The small tear could have been caused at any time during normal activities such as weigh bearing or walking and twisting during the summer of 2011. His subjective complaints were consistent with grade 4 arthritis in the patellofemoral joint which was the primary symptom generator. RX.1.

On March 5, 2012, Petitioner reported to Dr. Hill that his knee was improving. He had a fairly normal gait and lacked 10 degrees of full extension. He had some diffuse tenderness but no knee effusion. Dr. Hill noted that Petitioner undoubtedly will be a candidate for total knee arthroplasty in the near future. PX.2.

On March 28, 2012, Dr. Hill authored a report to Petitioner's attorney. He opined that Petitioner had some post-traumatic arthritic changes of his left knee. He further opined that Petitioner's work accident caused the tear to his left medial meniscus as it was not present during the May 10, 2011 surgery. The future prognosis was guarded as the new injury will cause a further acceleration of arthritic problems in his left knee. At some point he will be a candidate for total knee arthroplasty. He opined that the work injury caused a new tear of the medial meniscus. PX.2.

Dr. Hill testified that the Petitioner is a candidate for total knee replacement based on the degenerative changes and the prior procedure performed. PX.6. pg.22. He opined that Petitioner's accident aggravated his current condition. While he had prior issues with his knee, he had more menisci damage that aggravated his arthritic changes. PX.6. pg.23.

On April 4, 2012, Petitioner was seen by Dr. Hill. Petitioner recently started physical therapy and complained of weakness and discomfort, but was much better when compared to his pre-operative status. He had a normal gait and lacked 10 degrees of full extension. He had diffused tenderness of the left knee. PX.2.

On April 13, 2012, the physical therapist from AthletiCo noted Petitioner was getting frustrated because he felt like his progress was good, but he still had stiffness with walking. PX.3.

On April 24, 2012, the physical therapist noted Petitioner felt much better and reported decreased stiffness and an increased ability to walk without limping. PX.3.

On May 11, 2012, the physical therapist from AthletiCo noted Petitioner was seeing major improvement over the last two months. He claimed to no longer be limping and thought he may be able to return to work. PX.3.

On May 14, 2012, Petitioner reported to the physical therapist that he had increased pain and tenderness to the posterior access of the knee. On May 16, 2012, Petitioner reported a lot of pain. He claimed that he did not do anything out of the ordinary and was frustrated with the pain he was experiencing. PX.3.

On June 8, 2012, Petitioner was seen at AthletiCo and reported that he no longer had pain. His only limitation was stiffness. He had stiffness in the morning that decreased when he started working. However, he stated that with increased stiffness, he was not sure he could return to work. PX.3.

Petitioner was seen by Dr. Raju Ghate on June 26, 2012 for left knee pain that had been present for about a year. He had constant anterior knee pain that was 8 out of 10. He had pain when he walked. Examination revealed that he walked with an antalgic gait and his range of motion of the left knee was 5-90 degrees. He had a stable ligamentous exam and no effusion. He had patellofemoral grinding. The x-ray of the left knee revealed loss of joint space with osteophyte formation and subchondral sclerosis. The assessment was left knee degenerative joint disease. PX.4. He recommended total knee replacement.

On June 30, 2012, the physical therapist from AthletiCo authored a letter to Dr. Hill noting Petitioner had decreased pain overall, but still had decreased range of motion and endurance. Petitioner was worried that he could not return to work. Petitioner was frustrated with his left knee and its position. He demonstrated improvement with strength, range of motion and pain. He still had limited ability to complete squatting and crouching secondary to increased pain with knee flexion past 100 degrees. It was noted that all objective measurements were consistent with those taken on April 30, 2012. This was secondary to the patient not showing up for his final appointment on June 11, 2012. He was discharged from physical therapy as he plateaued. PX.3.

On July 13, 2012, Dr. Hill noted Petitioner completed physical therapy and was still complaining of intermittent swelling and pain in his left knee. Examination revealed that he lacked 10 degrees of full extension. He had medial joint line tenderness with crepitus. He was

diagnosed with post left knee arthroscopy, partial medial meniscectomy and degenerative arthritis of the left knee. PX.2.

Petitioner testified that he has been in a lot of pain since the accident. He manages his pain with Norco. He has not been able to work since the accident. It is hard for him to walk up stairs and he cannot walk long distances. T.31. He would like to undergo the total knee replacement. T.32.

The Commission finds that the Petitioner failed to prove that his left knee condition is causally related to his November 7, 2011 work-related accident. The evidence establishes that the Petitioner had advanced arthritis in his left knee. On one prior occasion, the Petitioner sustained injury to his left knee as the result of getting out of a chair. He also underwent two prior surgeries. Prior to his work-related accident, he was noted to have an antalgic gait, medial tenderness and he lacked 10 degrees of full extension of the left knee. On October 10, 2011, Petitioner sought treatment for his left knee.

The Petitioner then sustained an accident on November 7, 2011. The medical record establishes that he had pain and swelling, and tenderness to the medial and lateral joint line. The Petitioner underwent left knee arthroscopy on January 27, 2012. Dr. Hill opined the tear was causally related to the accident. However, Dr. Hill noted the fraying could be indicative of either an acute injury or a degenerative condition. Dr. Hill examined the Petitioner on April 4, 2012. The examination of the left knee revealed a normal gait though he lacked 10 degrees of full extension. He had diffused tenderness of his left knee. Petitioner was then discharged from physical therapy on June 30, 2012 as he had plateaued. On July 13, 2012, Dr. Hill noted that Mr. Rice still had pain and swelling. He lacked 10 degrees of full extension of the left knee and had medial joint line tenderness. The diagnosis was left knee degenerative arthritis.

The Commission finds the fraying and the need for the surgery to be casually related to the accident. However, the Commission finds that the Petitioner returned to his pre-injury condition as of June 30, 2012. The examination findings from May 10, 2011 through October 10, 2011 are virtually identical to those beginning on March 5, 2012. Prior to the accident, the Petitioner had diffused tenderness, pain and he lacked 10 degrees of full extension of the left knee. On October 10, 2011, Petitioner had a normal gait and was diagnosed with degenerative arthritis of the left knee. Following the accident, various examinations revealed that Petitioner lacked 10 degrees of full extension of the left knee and had diffused tenderness. On April 4, 2012, his gait was normal. As of June 13, 2012, Petitioner's diagnosis was degenerative arthritis of the left knee, which is the same diagnosis from his October 10, 2011 examination. Therefore, the Commission finds that the Petitioner's condition returned to its pre-existing state as of June 30, 2012 and is no longer causally related to his work-related accident of November 7, 2011.

The Commission further finds that the Petitioner is not entitled to total knee replacement as recommended by Dr. Hill. Dr. Hill noted that the need for the replacement was based on Petitioner's degenerative condition and prior surgeries, along with the accident. However, Dr.

Nelson was of the opinion that Petitioner was going to need total knee replacement regardless of the injury and the surgery is not related to the accident. The Commission finds Dr. Nelson's opinion more persuasive. Dr. Nelson's opinion is supported by the fact that the Petitioner had Grade 4 degenerative left knee arthritis and had two prior surgeries. Therefore, the Petitioner is not entitled to total left knee replacement.

The Commission further modifies the Arbitrator's decision and finds that the Petitioner is entitled to TTD from November 7, 2011 through June 30, 2012.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 30, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $938.67 per week for a period of 33-5/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner nterest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $31,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 10 2014

Michael P. Latz

Mario Basurto

David L. Gore

MPL/tdm
12-12-13
52

NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0013

RICE, ANTONIO
Employee/Petitioner

Case# **11WC043591**

CHICAGO CONSTRUCTION SPECIALISTS INC
Employer/Respondent

On 1/30/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0222 GOLDBERG WEISMAN & CAIRO LTD
DANIEL P SULLIVAN
ONE E WACKER DR 39TH FL
CHICAGO, IL 60601

2912 HANSON & DONAHUE LLC
KURT E HANSON
900 WARREN AVE SUITE 3W
DOWNERS GROVE, IL 60515

14IWCC0013

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ANTONIO RICE
Employee/Petitioner

v.

CHICAGO CONSTRUCTION SPECIALISTS, INC.
Employer/Respondent

Case # 11 WC 43591

Consolidated cases: __

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **KURT CARLSON**, Arbitrator of the Commission, in the city of **CHICAGO**, on **NOVEMBER 27, 2012.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **11/07/2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned $**73,216.00**; the average weekly wage was $**1,408.00**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **1** dependent children.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $ 938.67 /week for 55 1/7 weeks, commencing 11/8/2011 through 11/27/2012 , as provided in Section 8(b) of the Act.

Respondent shall authorize a total knee replacement with Dr. Raju Ghate, and Respondent shall authorize all attendant pre-surgical work-ups and post-surgical follow-ups necessitated by this surgery pursuant to Section 8(a) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

01-29-13
Date

ICArbDec19(b)

JAN 30 2013

STATEMENT OF FACTS

Petitioner Antonio Rice was working for Respondent Chicago Construction Specialists, Inc. He was working as a construction laborer. Prior to working for Respondent, Petitioner worked for Walsh Construction, as well as other places. He has been working as a construction laborer since 1986. As of November 7, 2011—the date Petitioner is claiming the work accident at issue—Petitioner had been working for Respondent for one day.

Petitioner reported to work the night shift on November 7, 2011; he arrived to start his shift at approximately 6:00 p.m. Petitioner testified that he received this job through his union; he did not apply directly, but was instead referred to this job. Petitioner understood that this particular job was demolition: he was to help clear a demolished building near the Merchandise Mart in Chicago. Petitioner arrived, spoke with the job foreman, and was put to work.

Petitioner initially started in the basement of the area where debris was to be cleared. He had to push a large, wheelbarrow-like object that he described as a "gondola" to an over-sized dumpster. The gondola was plastic and light when empty. It was approximately 4' tall, 4' wide and 5' long. However, when the gondola was full, it would weigh approximately 80-90 lbs. He would push the full gondola about 50 feet to the dumpster, where he'd empty the debris. He would then push the empty gondola back and replace it with another full gondola to be emptied. He completed this task 40-50 times and was in the basement for about 3 hours. Petitioner then went on break.

Petitioner switched to a different crew later in the shift. He was upstairs. He would help load debris into the gondola and push it about 100 feet to the elevator. He would then receive an empty gondola and push it back to the debris piles to be loaded.

Immediately prior to Petitioner's claimed injury, he was pushing a full gondola weighing approximately 90 lbs. Not only was the gondola full, but also there was half of a wall laying flat on top of the debris. While pushing the gondola, Petitioner felt a pop in his left knee. He immediately reported this injury and immediately sought medical treatment.

Petitioner treated initially at Northwestern Hospital Emergency Room, where he was seen at approximately 1:00 a.m. on 11/8/2011. (Petitioner's Exhibit 1, Medical Records from Northwestern Memorial Hospital). The treatment notes indicates a "45 yo man presenting with left knee pain (moderate, constant, non-radiating since earlier today). She [sic] was pushing a heavy item at his construction job when he felt and heard a pop from his left knee. He has since noted swelling and has had difficulty bering [sic] weight to the area." (PX 1). Petitioner was instructed to follow up with Dr. James Hill, with whom he had previously treated for both his left and his right knee. (PX 1).

Subsequent to this accident, Petitioner saw Dr. James Hill on 11/21/11. (Petitioner's Exhibit 2, Medical Records from Dr. James Allen Hill). On that date, Dr. Hill indicated that he believed that a new loose body may have developed. (PX 2). Petitioner next saw Dr. Hill on 12/21/2012, where Dr. Hill recommended a left knee arthroscopy. (PX 2). Petitioner underwent a left knee arthroscopy, partial medial meniscectomy and osteophyte excision on 1/27/2012. (PX 2). Dr. Hill subsequently saw Petitioner on 2/6/2012, 3/5/2012, 4/4/2012, and 6/13/2012. (PX 2). Petitioner also completed a post-operative physical therapy regimen consisting of approximately 31 visits from 3/31/12 – 5/31/12. (Petitioner's Exhibit 3, Medial Records from Athletico Physical Therapy, Berwyn, IL).

On the 6/13/2012 visit, Dr. Hill noted that Petitioner was not pleased with his progress, and Dr. Hill referred Petitioner to Dr. Raju Ghate. (PX 2). Petitioner saw Dr. Ghate on 6/26/2012. (Petitioner's Exhibit 4, Medical Records from Dr. Raju Ghate). Dr. Ghate recommended that Petitioner undergo a total knee replacement. (PX 4). Petitioner stated that he currently has difficulty walking and walking upstairs. Petitioner testified that he believes this procedure would help him, and that should the IWCC authorize this procedure, he would undergo it.

Petitioner also testified that he has had previous problems with his knee. Prior to this accident, Petitioner stated that he had two previous surgeries in his left knee and two previous surgeries in his right knee. The medical evidence presented supports this. Petitioner had scopes on his right knee in November 2006 and December 2009. (*See* PX 1). Petitioner also had a scope on his left knee in December 2010. (*See* PX 1). Most recently, Petitioner underwent a left knee arthroscopy with lateral chondroplasty and meniscal debridement/repair on 5/11/2011. (PX 1).

Petitioner testified that he has not walked normally since his first knee surgery in 2006. He stated that he walks with a slight limp and probably was walking with a limp on 11/7/2011. There is no dispute he is bowlegged.

Respondent presented three witnesses in this matter: construction supervisor Katarino Huizar, construction laborer Osmen Mendelose and Secura claims specialist Paul Barkow. Mr. Huizar testified that he worked with Petitioner on 11/7/2011 and that Huizar was primarily in a machine knocking down walls. He stated that he did not work that close to Petitioner. However, Huizar noted that he saw Petitioner walking a couple of different times with a limp. Huizar did not witness Petitioner's claimed accident. Mr. Huizar never saw or spoke with Petitioner prior to 11/7/2011 and has not seen or spoken to Petitioner after 11/7/2011, other than testifying.

Mr. Mendelose testified that he was working as a construction laborer. He also had never seen nor spoken to Petitioner prior to 11/7/2011, and has not seen or spoken to Petitioner after 11/7/2011, other than testifying. Mendelose was knocking down drywall and compiling the debris to be loaded into a gondola and taken down the elevator to the dumpster. Mendelose also indicated that he was not working that close to Petitioner and only saw him a few times. Mendelose stated that Petitioner "more or less" was walking with a limp, but stressed that Petitioner just seemed "tired." Mendelose did not witness Petitioner's claimed accident.

Mr. Barkow testified that he works for Secura Insurance, and he is the claims specialist that was assigned to Petitioner's case. He testified that he had a conversation with Petitioner subsequent to Petitioner reporting an injury. In that conversation, Barkow claims that Petitioner denied to Barkow that Petitioner had had any prior knee problems or knee surgeries. Barkow's investigation led him to discover that Petitioner did have prior knee problems. This discrepancy was one significant factor that resulted in Barkow denying Petitioner's claim. However, Barkow's investigation revealed no other discrepancies in Petitioner's statements. To date, no benefits have been paid on this claim to Petitioner.

In rebuttal, Petitioner testified that he has no independent recollection of working with, seeing, or speaking to either Mr. Huizar or Mr. Mendelose. He also testified that he told Mr. Barkow about his previous knee issues when Barkow contacted him after Petitioner filed his claim.

CONCLUSIONS OF LAW

The Arbitrator adopts the above findings of material facts in support of the following conclusions of law:

C. **Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?** AND

F. **Is Petitioner's current condition of ill-being causally related to the injury?**

An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2006). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Ill. Bell Tel. Co. v. Indus. Comm'n*, 131 Ill.2d 478, 483 (1989). "Arising out of the employment" refers to the origin or cause of the claimant's injury. *Caterpillar Tractor Co. v. Indus. Comm'n.*, 129 Ill.2d 52, 58 (1989). "In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Indus. Comm'n*, 66 Ill.2d 361, 366 (1977). There is no dispute regarding the second element, as all witnesses testified that Petitioner was present at the job site during the night shift on November 7, 2011.

"For an injury to 'arise out of the employment,' its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Johnson v. Indus. Comm'n.*, 2011 IL App (2d), 100418, ¶ 20. An injury will arise out of employment if the employee performs acts he was instructed to perform by his employer, or acts that the employee might reasonably be expected to perform incident to his assigned duties. *Id.*

Petitioner testified that his duty was to clear debris as part of a construction team demolishing buildings. He used the gondola to push a load weighing approximately 80-90 lbs. when he heard his knee pop. The only witnesses present, Mr. Huizar and Mr. Mendelose, testified that they were not near Petitioner when this happened.

The true dispute in this case is whether or not there exists a causal connection between the employment and the accidental injury, thus not "arising under" Petitioner's employment. Both Petitioner and Respondent have conflicting medical opinions as to whether or not Petitioner's current condition of his left knee is causally connected to his claimed work accident of 11/7/2011. Petitioner offers the opinion of Petitioner's treater, Dr. James Allen Hill, via narrative report and deposition. (*See* Petitioner's Exhibit 6, Deposition of Dr. James Allen Hill). Respondent offers the opinion of Section 12 examiner, Dr. Douglas Dirk Nelson via independent medical examination report, addendum report, and deposition. (*See* Respondent's Exhibit 1, Deposition of Dr. Douglas Dirk Nelson).

Dr. Hill testified that he first saw Petitioner to treat his left knee on 12/9/2010, where Petitioner reported that his knee popped when getting out of a chair. (PX 6, 8:2-11). Dr. Hill performed a left knee arthroscopy on Petitioner in December 2010. (PX 6, 9:17-18). Petitioner underwent post-operative physical therapy. (PX 6, 10:14-17). Petitioner had another episode in April 2011, which resulted in a second arthroscopy to the left knee on 5/10/2011; Dr. Hill found additional damage to the knee. (PX 6: 10:3-8, 11:3-12). Petitioner underwent additional post-operative physical therapy, but received a cortisone injection to the left knee on 7/18/2011. (PX 6, 13:6-8, 14:24-15:1-3). Petitioner saw Dr. Hill again on 8/29/2011, and Petitioner's condition had improved. (PX 6, 14:7-14). Dr. Hill treated Petitioner on 10/10/2011, where Dr. Hill indicated that Petitioner could work full duty as a construction worker. (PX 6, 14:19-15:6).

Subsequent to this accident, Dr. Hill treated Petitioner on 11/21/2011, where Petitioner reported that his knee gave out on him while pushing a cart at work. (PX 6, 15:7-17). Petitioner was experiencing pain, giving

way and swelling of the left knee, which were symptoms that were not present on his 10/10/2011 visit. (PX 6, 15:18-16:5). Dr. Hill recommended that Petitioner undergo a third left knee scope, which Petitioner underwent on 1/27/2012. (PX 6, 18:7-20). Of note, Dr. Hill testified that there was a small new tear in Petitioner's left knee that was not present as of his 5/10/2011 arthroscopy. (PX 6, 19:20-23). Dr. Hill identified the new tears via photographs that he took of Petitioner's left knee during surgery. (PX 6, dx 2). Dr. Hill eventually referred Petitioner to Dr. Raju Ghate for examination to see whether or not Petitioner needed a total knee replacement. (PX 6, 22:1-5).

Dr. Hill opined that Petitioner's claimed accident of November 7, 2011 is causally connected to his current condition in that it aggravated his pre-existing problems. (PX 6 23:6-12) It aggravated Petitioner's condition based on Petitioner's having damaged more menisci. (PX 6, 23:15-20). Dr. Hill also opined via narrative report that the work accident of November 7, 2011 caused Petitioner to tear his left medial meniscus which was not present for his May 10, 2011 surgical procedure. (PX 6, dx 3). Dr. Hill indicated that Petitioner had not worked since the date of accident and was still off work; his prognosis at that time was guarded. (PX 6; dx 3).

Dr. Douglas Dirk Nelson conducted an independent medical examination of Petitioner on 1/10/2012. (RX 1, 8:17-19). Dr. Nelson conducted a physical examination of Petitioner, as well as reviewed various medical records (*See generally*, RX 1). Based on his physical examination and records review, Dr. Nelson opined to a reasonable degree of medical and surgical certainty, that the incident of 11/7/2011 was not causally connected to Petitioner's current condition. (RX 1, 18:5-12). Dr. Nelson based this opinion on the fact that Petitioner complained of pain and popping prior to 11/7/2011 (RX 1, 18: 10-18). Dr. Nelson characterizes this incident was a "periodic flare-up" of Petitioner's pre-exisiting degenerative arthritis. (RX 1, 18:19-19:9).

It is the Petitioner's burden to establish a causal connection between an injury and his employment. *Caterpillar Tractor Co. v. Indus. Comm'n*, 83 Ill.2d 213, 216 (1980). Petitioner, through his treating medical records as a whole, plus the narrative report and deposition of Dr. James Allen Hill, has established a prima facie case of causal connection. First, Dr. Hill indicates that Petitioner suffered new symptoms that were not present on 10/10/2011, which Petitioner reported on his 11/21/2011 visit. Second, Dr. Hill indicates that Petitioner suffered a new tear that was present on 1/27/2012 that was not present on 5/10/2011.

It is apparent that Respondent disputes causal connection based on Dr. Douglas Dirk Nelson's opinion. Dr. Nelson essentially opines that the popping that Petitioner felt when he was pushing the 80-90 lb. cart was a flare-up of Petitioner's pre-existing arthritic degenerative condition and, therefore, not causally connected to his 11/7/2011 claimed accident. Dr. Nelson bases his opinion on one physical examination, records review, as well as two eyewitness statements indicating that they saw Petitioner limping in some time frame prior to the claimed accident.

Dr. Nelson agrees with Dr. Hill: there was certainly a new tear that occurred sometime between 5/10/2011 and 1/27/2012. Dr. Hill opines that the tear occurred as a result of Petitioner's pushing an 80-90 lb. gondola, and Dr. Nelson opines that is could have occurred at any time as a result of any activity (e.g., "walking, weight-bearing"). Dr. Nelson even indicates that the very activity that Petitioner was engaging in at the time of the accident could have caused his injury (RX 1, 32:16-23).

Based on the preponderance of the evidence presented, the Arbitrator finds that there exists a causal connection between Petitioner's claimed accident of 11/7/2011 and his current condition. Dr. Hill's opinion causally connecting the claimed accident to Petitioner's current condition, based on new symptoms and a new tear, carries more weight than Nelson's opinion.

K. **Is Petitioner entitled to any prospective medical care?**

Petitioner's treating surgeon, Dr. James Allen Hill, recommended that Petitioner see Dr. Raju Ghate. (*See* PX 2). Dr. Ghate recommended, based on his examination of Petitioner, that Petitioner undergo a total knee replacement. (PX 4).

Respondent's Section 12 examiner agrees: "If Mr. Rice had seen a surgeon that recommended a total knee replacement, I would agree with that recommendation. I mean based on diagnosis and review of records that I performed we already documented that he has grade four arthritis throughout his knee. So I agree completely that that's probably the next treatment for this gentleman." (RX 1 at 27:3-10).

There is no real dispute as to the reasonableness and necessity of this course of medical treatment. Because the threshold issues of accident and causal connection have been satisfied, it is clear, based on all three doctors' opinions, that a total knee replacement is appropriate prospective medical care.

Respondent shall authorize a total knee replacement with Dr. Raju Ghate, and Respondent shall authorize all attendant pre-surgical work-ups and post-surgical follow-ups necessitated by this surgery pursuant to Section 8(a) of the Act.

L. **What temporary benefits are in dispute?—*TTD***

Petitioner testified that he has not worked since 11/7/2011. Dr. Hill's report indicates that was still off work as of March 28, 2012 and was continuing to have ongoing treatment, which included a third arthroscopy of the left knee. Petitioner regularly and consistently treated with Dr. Hill, who eventually referred Petitioner to Dr. Ghate; Dr. Ghate has recommended a total knee replacement.

The Arbitrator notes that Dr. Hill's medical records do not explicitly take Petitioner off of work for every visit. However, finds that based on the totality of the circumstances—medical records showing consistent treatment by Petitioner, and the satisfaction of all other issues—that Petitioner is entitled to total temporary disability benefits from November 7, 2011 through the hearing date of November 27, 2012.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Evangelina Martinez,

Petitioner,

vs.

NO: 12 WC 25867

Alternative Staffing,

14IWCC0014

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of causal connection for temporary total disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

After considering all of the evidence, we find that Petitioner is entitled to temporary total disability benefits from August 7, 2012 through August 20, 2012. Following the July 12, 2012 accident, Petitioner was provided with light duty restrictions from Respondent's occupational medicine provider and subsequently from Petitioner's treating physician, Dr. Barnabas. On August 7, 2012, a pain management provider, Dr. Chunduri, examined Petitioner at the request of Dr. Barnabas. Dr. Chunduri diagnosed an L5-S1 disc herniation and right leg radiculitis. Dr. Chunduri performed a series of lumbar epidural steroid injections commencing on August 8, 2012. Dr. Chunduri issued an off-work slip for the period of August 7, 2012 through August 20, 2012. Dr. Chunduri failed to reissue Petitioner's off-work slip after August 20, 2012; in fact,

14IWCC0014

Petitioner reported significant functional improvement following the first injection and near-total resolution of her symptoms with the final injection. There is no medical testimony and we find no credible evidence in the record that Petitioner was temporarily totally disabled from all employment after August 20, 2012. We do not find the off-work slips contained in the records of Dr. Barnabas to be reliable. We note that none of the assertions made on the slips are corroborated by testimony or medical records and furthermore that the slips themselves bear errors negating their reliability.

Therefore, we modify the award of the Arbitrator as stated above and otherwise affirm and adopt the decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $265.67 per week for a period of two weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 15 2014
RWW/plv
o-12/11/13
46

Ruth W. White

Charles J. DeVriendt

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

MARTINEZ, EVANGELINA
Employee/Petitioner

Case# **12WC025867**

ALTERNATIVE STAFFING
Employer/Respondent

14IWCC0014

On 6/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2356 DONALD W FOHRMAN & ASSOC
JACOB BRISKMAN
1944 W CHICAGO AVE
CHICAGO, IL 60622

0481 MACIOROWSKI SACKMANN & ULRICH
JEREMY SACKMAN
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

14IWCC0014

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

EVANGELINA MARTINEZ
Employee/Petitioner

v.

ALTERNATIVE STAFFING
Employer/Respondent

Case # **12** WC **25867**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **December 21, 2012 & January 14, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

14IWCC0014

FINDINGS

On the date of accident, **7/12/12**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current conditions of ill-being of his low back, right elbow and right hip *are* causally related to the accident.

In the year preceding the injury, Petitioner earned an average weekly wage of **$265.67.**

On the date of accident, Petitioner was **40** years of age, ***married*** with **2** dependent children.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$500.00** as a permanency advance, for a total credit of **$500.00**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **$265.67**/week for **19-4/7** weeks, commencing **08/07/12** through **12/21/12**, as provided in Section 8(b) of the Act.

The Arbitrator has deferred, to a later hearing, the issues of reasonableness, relatedness and necessity of past and prospective medical care.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

June 26, 2013
Date

ICArbDec19(b)

JUN 27 2013

Evangelina Martinez v. Alternative Staffing, Inc.
12 WC 25867

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Arbitrator agreed to hear this case on the issues of causal connection and TTD benefits only, and to defer to a later hearing the issues of the reasonableness and necessity of past and prospective medical care.

In support of his decision with regard to issue (F) "Is Petitioner's current condition of ill-being causally related to the injury?", the Arbitrator makes the following findings of fact and conclusions of law:

The Arbitrator finds that Petitioner's conditions of ill-being of her low back, right elbow and right hip are causally related to the accidental injury of July 12, 2012.

Despite Dr. Chunduri's August 7, 2012 chart note that Petitioner told him that three days after this injury, she started also feeling pain in her neck and right shoulder, the Arbitrator specifically finds that any condition of ill-being of her neck or cervical area, if such exists, is not related to the accidental injury of July 12, 2012. The Arbitrator bases this finding on the absence of cervical complaints/ symptoms at the time Petitioner treated with the Concentra staff and with Dr. Barnabas, as well as on Dr. Levin's September 6, 2012 cervical examination of Petitioner.

At the time of the injury, Petitioner was employed by Respondent as a temporary staffing employee. She had been employed in that capacity for approximately ten years. Petitioner testified that on July 12, 2012, she was placed by Respondent to work at Assemblers, Inc. Petitioner had been working at this placement for a number of months prior to July 12, 2012. Petitioner's job assignments included popping and packing popcorn.

It is not disputed that on July 12, 2012, Petitioner and Respondent were operating under the Illinois Workers' Compensation Act and that their relationship was one of employee and employer. Respondent has stipulated to accident.

On the afternoon of July 12, 2012, while at Assemblers, Inc. and on her way to the restroom, Petitioner slipped and fell backwards and on her right side. Petitioner immediately notified her supervisor and was sent to Concentra Medical Center (RX2). She complained of right hip pain, right elbow pain and lower back pain. Petitioner was seen on four separate occasions at Concentra Medical Center (7/12, 7/16, 7/19 and 7/23) (RX2). Gregory S. O'Neill, M.D., examined Petitioner on three occasions and each time he examined her, a translator, Vanessa, was present. Ashley E. Loos, D.P.T., examined Petitioner on one occasion.

X-rays of the right hip were interpreted as showing no fracture and no dislocation. However, Dr. O'Neill advised Petitioner that the x-rays would be sent to a radiologist for a formal review and written report.

X-rays of the right elbow were interpreted as showing no evidence of dislocation. No effusion or posterior fat pad sign was seen, but there was some irregularity in the olecranon process. No radial head fracture was seen.

Each time she treated at Concentra, she complained of lower back pain and right hip pain. There is no history in the Concentra records of any lower extremity paresthesia, sensory loss, numbness or radicular symptoms. Yet, each time she visited Concentra, her bilateral, straight leg-raising test results were found to be positive. (RX2)

The Arbitrator takes judicial notice that the exam findings "Negative bilateral leg raise to 60 degrees" is not the same thing as a negative result for the bilateral straight leg raising test.

With regard to Petitioner's neck/cervical region, Dr. O'Neill recorded the following examination results:

7/12/12 Visit

NECK: No cervical spine tenderness. Normal range of motion.

7/16/12 Visit

Cervical: Spurlings test is negative. No pain on motion. No swelling. No tenderness. Full active range of motion with normal extension, flexion, axial rotation and lateral flexion.

7/23/12 Visit

Cervical: Spurlings test is negative. No pain on motion. No swelling. No tenderness. Full active range of motion with normal extension, flexion, axial rotation and lateral flexion.

When Ashley Loos, D.P.T., saw Petitioner, she recorded that her chief complaint was pain in the low back, primarily on the right, but no complaint of radiating symptoms. Ms. Loos noted, *inter alia*, the following:

JOINT MOBILITY

Unable to assess secondary to pain response, superficial tenderness C7-L5/S1

PALPATION

Diffuse tenderness, pain to light touch of C7-L5/S1 spinal regions, pain to light touch over area of sacrum, PSIS, bilateral S1 joint line.

Waddell's Testing

Waddell's overreaction positive.
Waddell's superficial tenderness positive.

Dr. O'Neill's assessment on July 23, 2012 was (1) Lumbar strain, (2) Hip contusion (the patient's overall clinical condition has improved.), and (3) Elbow contusion (condition has resolved).

Petitioner testified that at that point, Concentra only provided her with medication and one session of physical therapy. She testified that Concentra told her that she was fine.

Petitioner further testified that at that time, she saw a television ad about medical/legal help for those who have suffered a work injury.

On July 24, 2012, Petitioner chose to begin treating with Ravi Barnabas, M.D. She treated with him through November 30, 2012. Throughout Dr. Barnabas' records, he makes no mention of any neck pain or cervical condition of ill-being. (PX1)

An MRI was administered on July 24, 2012. Such images were interpreted, in relevant part, as follows: at the L5-S1 level, there is a 3-4mm subligamentous broad-based posterior protrusion/ herniation indenting the thecal sac without significant spinal stenosis. Mild bilateral neuroforaminal narrowing was seen, exacerbated by mild facet arthrosis and some ligamentum flavum hypertrophy. (PX1).

On August 7, 2012, upon referral from Ruben Bermudez, D.C., P.A., Petitioner saw Krishna Chunduri, M.D. Dr. Chunduri recorded that she had complaints of pain "primarily in her lower back radiating down her right lower extremity as well as right elbow pain and neck pain since a work-related accident on 07/12/12 . . . [s]he was on her way to lunch and slipped on a wet floor, falling backwards to her right side. She states she suddenly started having pain, a shooting, burning pain in her lower back with numbness and tingling and pain radiating down her right lower extremity down to her heel. She states that three days after this injury, she started also feeling pain in her neck and right shoulder." Upon examination of her cervical spine, Dr. Chunduri found: "No cervical tenderness. Normal flexion, extension, and rotation of cervical spine." There is no mention of any upper extremity radicular symptoms. The doctor found, *inter alia*, Petitioner's straight leg raising test to be positive on the right and negative on the left. Dr. Chunduri offers the following diagnoses: (1) L5-S1 disk herniation with right radiculitis and lumbago (2) Cervicalgia, and (3) Right elbow pain. So, despite the fact that there were no examination findings with regard to the cervical spine, Dr. Chunduri diagnosed cervicalgia. Dr. Chunduri administered a series of injections to Petitioner's lower back. (PX1)

According to Petitioner, none of the injections provided lasting relief.

On August 28, 2012, Dr. Chunduri noted that "her neck pain has increased since the initial presentation." (PX1)

Petitioner was seen by her physician, Dr. Chunduri on September 4, 2012. (RX5) On this date, the Petitioner advised Dr. Chunduri that overall her pain had significantly diminished. "She states that

she no longer has any low back pain where she initially complained." "She also states that her right lower extremity numbness has resolved." "She states that she only has pain the mid-back radiating up the base of her neck." "She has no other complaints." (RX5)

On examination, Dr. Chunduri had the following findings: no lumbar tenderness to palpation; mildly decreased flexion, extension and rotation; straight leg raising is negative bilaterally; knee extensions were 5/5 bilaterally; patellar flexion 5/5 bilaterally; deep tendon reflexes were 2+ bilaterally; there is no S1 joint tenderness. The doctor indicated that the pain originating from the L5-S1 disc appeared to have resolved with the injections. She no longer had radicular symptoms. She now had pain and complaints in a different area radiating into the neck of a myofascial nature. She was discharged from the pain clinic and was to follow up as needed. (RX5)

When questioned about Dr. Chunduri's findings on September 4, 2012, Petitioner denied the majority of such findings and testified that she was still in significant pain.

At the request of Respondent, and pursuant to Section 12 of the Act, orthopedic surgeon Mark N. Levin, M.D., examined Petitioner on September 6, 2012. Upon examination, Dr. Levin found, inter alia, the following: "Cervical spine exam shows that when one presses the earlobe, she complains of neck pain. Releasing the earlobes initially she said it was better, but then upon repeat exam stated that upon releasing her earlobes gave her no improvement. She has diffuse discomfort over the trapezius bilaterally with no cervical or trapezial spasm. She has full range of motion of the cervical spine. She has diffuse discomfort when anyone palpates over the thoracic spine with no thoracic spasm." (RX8)

Dr. Levin also wrote the following: "Based upon this patient's history, physical exam, radiographic studies, and medical records, this patient has subjective complaints of low back and right buttock pain after an alleged fall at work . . . In regards to her right arm, she does appear to be at maximum medical improvement. (RX8)

In a report dated October 3, 2012, Scott E. Lipson offered the following interpretation of the EMG/NCV of Petitioner's right lower extremity: "Lumbago – 724.2 (Primary), Normal study. There is no electrophysiologic evidence for right lumbosacral plexopathy, mononeuropathy or polyneuropathy affecting the right leg. Nevertheless, she developed back pain only after her fall and whatever is causing her back pain clearly developed as a result of her fall. Note is made that this study can be entirely normal in cases of pure sensory radiculopathy."

The Arbitrator notes that neither Scott E. Lipson's credentials nor the graphs that support the EMG/NCV results were included in his report.

Petitioner was later referred to Michel H. Malek, M.D., a neurosurgeon. On November 14, 2012, Dr. Malek diagnosed Petitioner with, *inter alia*, the following: S/P work injury 7/12/12, cervical musculoligamentous sprain/strain, non-radicular neck pain, lumbar musculoligamentous sprain/strain, lumbar radiculopathy primarily right-sided (clinically in L5-S1 distribution with preponderance of pain), evidence of myelopathy on examination, S/P ESI x3 with Dr. Chunduri with good but partial and temporary response, persistence of symptoms at a level patient not capable or willing to live with and EMG/NCV done 10/3/12 of the right lower extremity was negative electrodiagnostically. Dr. Malek ordered an MRI of the cervical spine. (PX1)

On November 30, 2012, Dr. Barnabas saw Petitioner and recorded the following subjective complaints: "The patient comes in with pain in her lower back, right hip and right elbow with a pain scale of 7/10 in her right hip and 6/10 in the right elbow, and 7/10 in the lower back."

Radiologist George G. Kuritza, M.D., offered the following impression of Petitioner's December 3, 2012, MR images:

(1) At the C3-C4 level, there is a 2-3 mm. focal central posterior disk protrusion/herniation slightly indenting the thecal sac without significant spinal stenosis, nor significant neuro-foraminal narrowing.
(2) At the C4-C5 and C5-C6 levels, mild posterior annular disk bulges slightly indented the thecal sac without spinal stenosis, nor significant neuroforaminal narrowing.
(3) The rest of the cervical spine appeared unremarkable. (PX1)

On December 5, 2012, Dr. Malek performed a discogram at the L3-L4, L4-L5 and L5-S1 levels, fluoroscopy and post-diskogram CT scan of the lumbar spine. (PX1)

At the arbitration hearing, Petitioner testified that since the time she was referred to Dr. Malek, she has seen him because her neck bothers her a lot. She said that he sent her for an MRI of the neck and a discogram of the low back. She further testified that she never injured herself before while working for Alternative Staffing. She testified that she feels a lot of pain and takes a lot of pain pills. She complained of neck and low back pain.

In support of his decision with regard to issue (L) "What temporary benefits are in dispute?" (TTD), the Arbitrator makes the following findings of fact and conclusions of law:

In the Request for Hearing, Petitioner claimed to be entitled to a TTD period from "8/7/12 through 12/21/12, representing 19.4 weeks." (AX1) Respondent disputed such claim and wrote, with regard to Petitioner's entitlement to a TTD period: "*none - π released for light duty work which was offered and available.*" (AX1)

Dr. Barnabas released Petitioner to return to work with light-duty restrictions on July 24, 2012 (PX1).

Petitioner testified that she returned to work on or about July 30, 2012 (PX2). She testified that after an hour of packing soup containers on the soup line, she felt pain in her back. After two hours of work that day, Petitioner testified, she "couldn't support them." Axel then told her that if she couldn't tolerate the pain, she should leave. Petitioner testified that she attempted to return to work on August 1, 2012, but could not tolerate the pain after packing for awhile and had to leave.

On August 7, 2012, Krishna Chunduri, M.D., took Petitioner completely off work and prescribed a series of injections. (PX1)

Petitioner testified that the injections were successful in alleviating the pain in her lower back temporarily, but that the pain returned each time.

On September 6, 2012, Petitioner attended a Section 12 examination with Dr. Levin. In his report, Dr. Levin opined: "At the present time, she does appear to be capable of working at least light duty with no repetitive bending, squatting, or stooping activities and just based on objective complaints of pain, should avoid excessive lifting and carrying." (RX8)

In Respondent's Exhibit #9, an addendum report dated December 13, 2012, Dr. Levin amends this last statement in RX8 and replaces the word "objective" with "subjective." Dr. Levin also wrote: "As outlined in my report of September 6, 2012, if she has completed her physical therapy, she should have a baseline functional capacity evaluation with validity measurement and with that information determine the ability to return back to work full duty." (RX9)

In Respondent's Exhibit #10, an addendum report dated December 18, 2012, Dr. Levin wrote: "From an orthopedic standpoint, the patient has had excessive modalities and should have been capable of returning back to work full duty within 3-4 months post injury." (RX10)

Petitioner testified that on the date of the accident, she spoke with Ana, an Alternative Staffing employee, on the telephone. Petitioner admitted, and the records from Concentra confirm, that she was released for work with restrictions of no lifting over ten pounds and no bending.

Petitioner was questioned about whether or not she spoke with Lupe Almaraz, the Alternative Staffing risk manager, on July 13, 2012. Petitioner admitted that she did. Lupe testified that she offered Petitioner a light, sedentary job consistent with the Concentra restrictions to be performed at the Alternative Staffing office. The job was an office job wherein Petitioner would be sorting and highlighting hundreds of applications. Lupe advised Petitioner that she could sit or stand.

Lupe testified that Petitioner was specifically advised it was an office job and she would report to Alternative Staffing.

Petitioner admitted that no physician advised her that she could not perform this job. She just felt that she couldn't and therefore she did not report for work. She also denied that an office job was offered.

Petitioner admitted that on July 16, 2012, she was questioned by the doctor at Concentra as to why she was not working. She denied that she stated that there wasn't any light duty.

The Concentra records reflect that Petitioner advised the facility she was not working as there wasn't any light-duty work available.

The Arbitrator notes that Petitioner's statement was inaccurate. Lupe had advised Petitioner on July 13, 2012, that light-duty, sedentary work available.

Lupe testified that she spoke with Petitioner again on July 17, 2012. Petitioner failed to report for work. When she spoke with Petitioner, she once again advised her that sedentary work was available in the Alternative Staffing office. Petitioner was once again advised that she could stand or sit. Petitioner advised Lupe she would report for work on July 18, 2012.

Petitioner admitted that she did not report for work on July 18, 2012 and testified that she telephoned Lupe and advised her she would not be reporting for work. Lupe denied that she received a telephone call from Petitioner, but indicated that she was aware Petitioner would not be reporting. It turned out that Petitioner spoke with Ana, and not Lupe, and advised Ana that she would not be reporting for work. Petitioner admitted that when she refused to return to work on July 18, 2012, there was no physician who indicated she was incapable of performing the work offered. In fact, the only physician Petitioner had seen released her for work with restrictions. Once again, Petitioner, on her own, refused to accept the job that had been offered.

Petitioner attended physical therapy at Concentra on July 19, 2012. She only attended one physical therapy session at this facility. She once again admitted she had been released for work with restrictions.

Petitioner was asked whether or not, prior to July 25, 2012, she had ever been advised by Alternative Staffing that the light-duty work offered by Respondent was in Respondent's office. Petitioner denied any such offer and testified that the work offered was always at Assemblers.

Petitioner was then shown Respondent Exhibit #6(a), a letter authored by Lupe Almaraz and dated July 18, 2012. That letter, which Petitioner acknowledged receiving, (receipt is confirmed by certified mail – Respondent's Exhibit #6(b)), is clear as to the nature of the job offered. Petitioner was advised that light-duty work was available and offered. The letter confirms the July 17, 2012 conversation in which Petitioner was advised that light-duty work was offered in Respondent's "office". The conversation in which Petitioner accepted that light duty offer was detailed. The fact that Petitioner later telephoned and refused the light-duty job offered was noted. The letter concludes with instructions that Petitioner needs to report to the office for the work assignment. Petitioner was advised to contact the office regarding her intent to remain employed.

Petitioner admitted that she reads Spanish and that she received the letter. She claimed that she was confused as to where the job was to be performed. She denied that she reported to the office on July 25, 2012 and spoke with Lupe.

Lupe credibly testified that Petitioner reported to the Alternative Staffing office on July 25, 2012. Petitioner advised Lupe that she had received the certified letter. Lupe advised Petitioner that light-duty work was available in the Alternative Staffing office and Petitioner was advised that she could sit or stand. Petitioner handed Lupe the ten-pound lifting restriction she received from Alivio. Lupe told Petitioner that this restriction could be accommodated. Petitioner was also advised that she would be "highlighting" employment applications. Petitioner was advised that if she worked, she would be paid and if she did not work, she would not be paid. Lupe testified that Petitioner told her she would not accept the job.

Petitioner admitted that she was released for work with restrictions by Alivio on July 24, 2012 and again on July 31, 2012. (RX#, RX4) Petitioner was asked whether or not she made an effort to perform office work. She claimed that she was never offered office work.

Petitioner was asked if Respondent ever sent her to Assemblers to perform light-duty work for them. Petitioner claimed that on Sunday, July 29, 2012, she had a telephone conversation with Ana.

She claimed that Ana advised her that she should report to Assemblers for light-duty work. Petitioner claimed that Ana gave this assignment after she had spoken with Lupe.

Lupe testified that she did not work on Saturday or Sunday and that it would have been impossible for Petitioner to have spoken with Ana on Sunday July 29, 2912 to make this assignment. Lupe also testified that since Petitioner had light-duty restrictions, she was coded into the system as work comp. Lupe was the only person at Respondent who could assign the Petitioner to a light-duty position. Lupe testified without contradiction that she never assigned the Petitioner to work at Assemblers. She testified that, in fact, she telephoned Assemblers on or about July 13, 2012. Assemblers advised that they were unable to accommodate Petitioner's light-duty restrictions. This was the reason Respondent offered Petitioner light-duty work in its office.

Lupe testified that Petitioner's attorney contacted her and asked her if Respondent had light-duty work for Petitioner. Lupe testified that in response to Petitioner's attorney's question, she said "Yes, we do." Lupe then testified that Petitioner's attorney then stated that he would be looking to have Petitioner taken off work.

This conversation was not contradicted by Petitioner's attorney.

Lupe testified that she spoke with Leticia at Assemblers sometime in December of 2012 when she first learned that Petitioner had actually reported to Assemblers for work in July. Lupe further testified that Leticia advised her that when Petitioner reported for work on the two days in July and August of 2012, Petitioner advised Leticia that Lupe had told her to report to Assemblers for light-duty work. Lupe denied this allegation. Lupe testified that she never assigned Petitioner for light-duty work at Assemblers.

Ana Hernandez testified on January 14, 2013. She testified that she is employed with Respondent as a dispatcher. Her job as a dispatcher involves sending people to work, which depends on the work orders received from the customers. She testified that she was at work on July 29, 2012. She testified that this was a Sunday. She testified that Lupe Almaraz was not at work as Ms. Almaraz did not work on Saturday or Sunday. She testified that she would never telephone Lupe at home with a question regarding specific employee assignments.

Ana testified with regard to the procedures she followed as a dispatcher. When an employee phoned in to seek a job assignment, she would immediately look up that employee's information on the computer to determine his or her status. She would check to determine whether or not the person is an Alternative Staffing employee, i.e., had the person completed an application and was he or she accepted. She would also check to see if the person is in good standing with the customer with whom he or she would be working. She would check to see if that person was listed as having a workers' compensation injury. There is a portion in the file of each employee that indicates whether or not that person has workers' compensation restrictions. Only Lupe Almaraz can assign an employee with restrictions.

Ana testified that she is not authorized to assign an individual to a light-duty job if that person has restrictions. Only Lupe is authorized to assign an employee to a light-duty job.

Ana could not specifically recall whether or not she had a conversation with Petitioner on July 29, 2012. She testified that hundreds of employees call daily and, to be honest, she could not recall if she spoke with Petitioner on that date. However, she recalled that she did not speak with Lupe on that date. Petitioner had claimed that when she spoke with Ana on July 29, 2012, Ana told her she would have to confer with Lupe before assigning her.

Petitioner testified that Ana advised her during that call that she had spoken with Lupe on Sunday and Lupe advised Ana to assign Petitioner to Assemblers. Since this was Lupe's day off and Ana did not telephone Lupe at home, Ana testified, that portion of the conversation never occurred, if indeed there was a conversation. Ana testified that she never assigned Petitioner to Assemblers on July 29, 2012. Ana testified that had Petitioner telephoned, she would have looked up her file on the computer and seen that Petitioner had a workers' compensation claim. At that point, she simply would have referred Petitioner to Lupe for further conversation.

Ana was shown a pay stub that indicated Petitioner worked at Assemblers on July 30 and August 1, 2012. Ana testified that employees could report directly to the customer and if the customer chose to have that person work, Alternative Staffing did not have any input regarding the same. Ana reiterated that she never assigned Petitioner to Assemblers for light-duty work or otherwise on July 29, 2012 or any other date.

Petitioner acknowledged she was aware that light-duty work had been available with Respondent since July 13, 2012 and throughout the course of her treatment. She admitted that she has not had any contact with Respondent or Lupe since she last attempted to work there. She has not made any effort to contact the Respondent and return to light-duty work. Petitioner admitted that as recently as December 14, 2012, light-duty work in the Alternative Staffing office was once again offered to her and she refused the same.

Petitioner was questioned regarding her examination with Dr. Levin on September 6, 2012. She testified she was aware that Dr. Levin released her for light-duty work and admitted that she never contacted Respondent to determine whether or not the light-duty positions offered were still available.

Lupe testified without contradiction that the light-duty, sedentary work offered to Petitioner three times verbally and once in writing, has been available since July 13, 2012 and is still available.

Notwithstanding the testimony of Lupe and Ana, as well as the work status opinions of Dr. Levin, the Arbitrator finds that Petitioner's has had consistent complaints of low back pain since the date of the accident. She received temporary relief following the injections.

Dr. Chunduri first took Petitioner off work on August 7, 2012, and never released her to return to work. (PX1)

In his November 14, 2012 chart note, Dr. Malek notes: "Persistence of symptoms at a level patient not capable or willing to live with." (PX1) Dr. Malek continued to keep Petitioner off work. (PX1)

At the arbitration hearing, Petitioner testified that she feels a lot of pain and takes a lot of pain pills.

Based on the foregoing, and by a preponderance of the evidence, the Arbitrator finds that Petitioner was temporarily totally disabled from August 7, 2012 through December 21, 2012.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Lynn Roll,

Petitioner,

vs. NO: 09 WC 14840

United School District #304,

14IWCC0015

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection and permanent disability and being advised of the facts and law, modifies the Decision of the Arbitrator on the issue of permanent disability as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator found that Petitioner proved a compensable accidental injury on October 24, 2009 and that her current condition of ill-being in the right leg is causally connected to the injury. Petitioner underwent a diagnostic arthroscopy of her right knee on February 23, 2009; the findings were consistent with degenerative arthritic changes of the patella involving both the medial and lateral facet areas. A synovectomy and chondroplasty were performed to address synovial hypertrophy and articular surface degeneration. Four weeks later, Petitioner was released to return to full duty work as a school bus driver. She underwent a series of Euflexxa injections in December of 2009 and January of 2010. Petitioner testified that she experiences aching in her right knee and a feeling of instability while descending stairs. Petitioner testified that she has been able to perform all of her regular duties since her return to work in March of 2009. The Arbitrator awarded 20% loss of use of the right leg. After considering all of the evidence, we view the Petitioner's disability differently and reduce the award of the Arbitrator to 12.5% loss of use of the right leg.

14IWCC0015

All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $161.53 per week for a period of 25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $29,660.18 for medical expenses under §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 15 2014
RWW/plv
o-12/04/13
46

Ruth W. White

Charles J. DeVriendt

Daniel R. Donohoo

NOTICE OF ARBITRATOR DECISION

ROLL, MARY LYNN
Employee/Petitioner

Case# **09WC014840**

UNITED SCHOOL DISTRICT #304
Employer/Respondent

14IWCC0015

On 12/5/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4019 GULLBERG & BOX LLC
MEAGAN K BOX
122 W BOSTON AVE SUITE 200
MONMOUTH, IL 61462

1337 KNELL & KELLY LLC
MATT BREWER
504 FAYETTE ST
PEORIA, IL 61603

14IWCC0015

STATE OF ILLINOIS)
)SS.
COUNTY OF Peoria)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Mary Lynn Roll
Employee/Petitioner

v.

United School District #304
Employer/Respondent

Case # 09 WC 14840

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Mathis**, Arbitrator of the Commission, in the city of **Peoria, Illinois**, on **September 25, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On, **October 24, 2008** Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned $; the average weekly wage was **$230.76**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Medical benefits

Respondent shall pay reasonable and necessary medical services of $29,660.18, as provided in Sections 8(a) and 8.2 of the Act.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $161.53/week for 43.00 eeks, because the injuries sustained caused the 30% loss of the Right Leg, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

S J Math
Signature of Arbitrator

Nov 29, 2012
Date

DEC - 5 2012

FACTS

Petitioner testified that on 10/24/08 she was employed by the Respondent, United School District #304, as a bus driver. The Petitioner's duties on that day were to drive the football team to its game versus Elmwood United. Petitioner testified that she watched the game from the bleachers and the weather for that particular day was wet and rainy. Petitioner testified that towards the end of the game she got up from her seat in the bleachers to use the restroom and to then go and warm up the bus for the ride home.

Petitioner testified that as she walked down the bleachers she reached the last step when she hopped down to the ground and felt pain in her right knee. Petitioner testified that the distance between the lowest stair of the bleachers where she was and the ground was approximately three feet. Petitioner testified that her right leg hit the ground first followed by her left leg. Petitioner described her getting off of the bleachers as sort of a hop.

Petitioner testified that once she was on the ground she then proceeded to the restroom and subsequently arrived at her bus. Petitioner testified that she was in a great deal of pain and used her umbrella as a cane to walk with. Petitioner testified that once the game had ended she drove the football players back to the school.

The Petitioner testified that she did not seek medical treatment for her alleged injury until the following Monday on 10/27/08. At that time the Petitioner was given anti-inflammatories and was released from care with a diagnosis of "pain in limb." (*Resp. Ex.* 5). Petitioner then followed up with her primary care physician Dr. Medrano on November 5, 2008. Dr. Medrano noted the Petitioner had only moderate knee pain and evidenced no swelling or edema. (*Resp. Ex.* 6). Dr. Medrano ordered x-rays to be taken at this time which showed no evidence of recent fracture or dislocation as well as osteoarthritic changes in the right knee and patella. (*Resp. Ex.* 2). Subsequently the Petitioner underwent a course of physical therapy which was unsuccessful.

Petitioner underwent an MRI of her right knee on 12/8/08 at Southeast Iowa Open MRI. Petitioner's MRI showed that the menisci, cruciate ligaments, extensor mechanism, iliotibial band, and collateral ligaments were all intact. Petitioner was noted to have adequate articular cartilage remaining and otherwise the marrow signal was noted to be normal. (*Resp. Ex.* 1). The Petitioner's MRI was normal. (*Resp. Ex. 1*). Petitioner later came under the care of Dr. Norman Cohen. Dr. Cohen noted in his 1/13/09 record that the Petitioner's MRI scan did not reveal any different pathology. Dr. Cohen also noted that the Petitioner's x-rays revealed at most Grade 2 medial narrowing. (*Resp. Ex.* 10).

Petitioner testified that in her second visit with Dr. Cohen the recommendation for an arthroscopy for her right knee was given. The Petitioner underwent an arthroscopy of the right knee, chondroplasty medial femoral condyle, chondroplasty medial tibial plateau, chondroplasty patella, synovectomy intercondylar notch, synovectomy suprapatellar compartment all of the right knee on 2/23/09 by Dr. Cohen. Petitioner testified that she was off work for four weeks following the surgery. Petitioner was released to work full duty on 3/23/09. (*Resp. Ex.* 10). The Petitioner testified that following her release to return to work she continued to have aching and stiffness in the knee. Petitioner testified that following her injury she can no longer work with special needs children with the Rainbow Riders program. This program involves teaching special needs children to ride horses and other equestrian type activities.

The Petitioner testified that she continued to follow up with Dr. Cohen following her full release to return to work in March 2009. Petitioner testified that from December 2009 through January 2011, Dr. Cohen performed Euflexxa injections. Petitioner testified that a portion of her medical bills were paid for by her husband's health insurance through his employer. Petitioner testified that at the time of trial her current complaints consisted of knee aches and a warm

feeling within her right leg and knee. Petitioner testified she has difficulty with walking extended distances.

CONCLUSIONS OF LAW

14IWCC0015

The Arbitrator Concludes:

Paragraph C. The Arbitrator concludes that on October 24, 2008, the Petitioner sustained an accidental injury to her right knee that arose out of and in the course of her employment with United..

Paragraph F. The Arbitrator concludes that the Petitioner has proven a causal relationship exists between the injury she sustained on October 24, 2008 and her current condition of ill-being through the chain of events, the medical records of Dr. Medrano and Dr. Cohen, and the opinion of Dr. Cohen.,

Paragraph J. The Arbitrator concludes that the medical services were reasonable and necessary. Therefore, United should pay for these services.

Paragraph L. The Arbitrator concludes that the injury resulted in a loss of 20% use of the right leg.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Latasha Steele,

Petitioner,

vs.

No. 10WC026343

14IWCC0016

Binny's Beverage Depot,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, the necessity of medical treatment, prospective medical care, temporary disability, and "[m]arital status; evidence issues; admissibility; order of witnesses; [and] credits for medical paid," and being advised of the facts and law, modifies the decision of the Arbitrator as stated below, and otherwise affirms and adopts the decision of the Arbitrator which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Arbitrator found that Petitioner's current condition of ill-being is causally related to the June 28, 2010, undisputed accident. Relying on Dr. Crovetti's opinions, the Arbitrator also found that the January 18, 2011, motor vehicle accident did not break the chain of causation between the undisputed accident and Petitioner's lower back injury. The Commission disagrees.

Petitioner testified that on January 18, 2011, a motorist rear-ended her vehicle while she was stopped at a red light. At the time of the incident, Petitioner felt "a little tap" and noticed that her vehicle moved a few inches. Petitioner was not hurt from the impact and there was no damage to either vehicle. On cross examination, Petitioner acknowledged that on January 6, 2011, Dr. Crovetti decreased her pain medication. Petitioner also acknowledged that on January 20, 2011, Dr. Crovetti asked her to describe her pain. When asked whether she had been tearful

and melancholy during the same appointment, Petitioner stated that she "could have been" but could not remember. Petitioner also could not remember whether she told Dr. Crovetti that she had increased her pain medication since the motor vehicle incident.

Dr. Crovetti's records show that on January 6, 2011, Petitioner reported feeling much better, rating her lower back pain as six out of ten, and had no radicular pain. Petitioner also reported that she had decreased her pain medication. Dr. Crovetti recommended that she continue physical therapy and noted that if she continued to improve, he would release her to "more full time" work within two weeks. On January 20, 2011, Dr. Crovetti noted that Petitioner was melancholy and tearful, and had been doing well until two days before when she was involved in a rear-end motor vehicle accident. Petitioner reported that before the accident, her pain was rated two out of ten. After the accident, Petitioner rated her pain as five out of ten and increased her pain medication. Petitioner also reported having "some discomfort going into her left leg" during physical therapy that day. Dr. Crovetti diagnosed Petitioner with "[l]ow back pain with radiculopathy secondary to L5-S1 disc herniation [which] was improving until the motor vehicle accident this Tuesday," and recommended that she undergo a second epidural injection. On February 16, 2011, Dr. Crovetti performed a left L5-S1 transforaminal epidural injection.

On March 2, 2011, Petitioner reported that she was doing okay and rated her pain as two to three out of ten. Petitioner also reported that she experienced severe lower back pain about one week after undergoing the second epidural injection, which Dr. Crovetti attributed to her bed. Dr. Crovetti recommended that Petitioner begin aggressive physical therapy. On March 16, 2011, Petitioner rated her lower back pain as eight out of ten and reported having radiating pain in her arms, legs and buttocks. Dr. Crovetti opined that Petitioner's increased pain was muscular in nature and was secondary to the aggressive physical therapy. However, Dr. Crovetti referred Petitioner to Dr. Sokolowski for a second opinion because almost one year had passed since her injury. On March 24, 2011, Petitioner treated with Dr. Sokolowski and complained of continued lower back pain rated eight out of ten. Dr. Sokolowski diagnosed Petitioner with lumbar pain and radiculopathy, noted that she had reached nonoperative maximum medical improvement, and recommended that she undergo surgery.

The Commission finds that the motor vehicle accident on January 18, 2011, was an intervening accident that broke the chain of causation between the undisputed June 28, 2010, accident and Petitioner's lower back injury. Petitioner's testimony that she sustained no injuries at the time of the motor vehicle accident is contradicted by Dr. Crovetti's January 20, 2011 note, which shows that after the motor vehicle accident, Petitioner's pain increased and her radicular symptoms recurred. The Commission finds Dr. Butler's opinion, that the motor vehicle accident changed Petitioner's condition and caused the previously successful conservative medical treatments to fail, persuasive and consistent with the medical records. Prior to the motor vehicle accident, Petitioner had begun to take less pain medication and Dr. Crovetti planned to release Petitioner to "more full time" work within a few weeks. After the motor vehicle accident, Petitioner's pain increased and did not improve with pain medication, physical therapy or another epidural injection. The Commission awards Petitioner all medical expenses for treatment incurred before January 18, 2011, and awards Petitioner temporary total disability

benefits from June 29, 2010, through August 19, 2010, and from November 30, 2010, through January 18, 2011.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on January 22, 2013, is hereby modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner all reasonable and necessary medical expenses for treatment incurred before January 18, 2011, under §8(a) and §8.2 of the Act and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $245.33 per week for 14-4/7 weeks, from June 29, 2010, through August 19, 2010, and from November 30, 2010, through January 18, 2011, which is the period of temporary total disability for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 15 2014
MB/db
o-12/11/13
44

Michael J. Brennan

Charles J. DeVriendt

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

STEELE, LATASHA
Employee/Petitioner

Case# **10WC026343**

14IWCC0016

BINNY'S BEVERAGE DEPOT
Employer/Respondent

On 1/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0786 BRUSTIN & LUNDBLAND LTD
CHARLES E WEBSTER
100 W MONROE ST 4TH FL
CHICAGO, IL 60603

0532 HOLECEK & ASSOCIATES
LAWRENCE A SZYMANSKI
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Latasha Steele
Employee/Petitioner

v.

Binny's Beverage Depot
Employer/Respondent

Case # 10 WC 26343

Consolidated cases: ___

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **July 24, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other ___

FINDINGS

On the date of accident, **June 28, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned $**13,260.00**; the average weekly wage was $**255.00**.

On the date of accident, Petitioner was **28** years of age, ***married*** with **1** dependent child.

Respondent shall be given a credit of $**7,675.32** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**7,675.32**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act, **as of this time**.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**245.33**/week for **93-4/7** weeks, commencing **6/29/2010** through **8/19/2011** and from **11/30/2010** through **7/24/2012** as provided in Section 8(b) of the Act.

Respondent shall authorize and pay the reasonable cost of the prospective medical care that Dr. Sokolowski has recommended.

Respondent shall pay petitioner an amount equal to the sum of the unpaid medical bills in Px.4, Px.6, Px.9 and Px.11, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

January 19, 2013
Date

ICArbDec19(b)

JAN 22 2013

Latasha Steele v. Binny's Beverage Depot, 10 WC 26343

FINDINGS OF FACT

Latasha Steele testified that on June 28, 2010, she was employed as a cashier at Binny's Beverage Depot, 733 W. North Avenue, Elmwood Park, Illinois, when she slipped on water and fell to the floor. The water had collected on the floor following a delivery of ice. Petitioner further testified that her job as a cashier required her to twist, turn, bend and reach in order to bag customer's purchases and to stock shelves.

She testified that she noticed immediate pain in her low back, her left knee and a cut on her lip. She testified that her health to this slip-and-fall was good and that she never had these types of pain before June 28, 2010. She testified that two managers Susan Mariott and Keisha Smith were with her when she fell and that Keisha Smith instructed a co-employee named Zak to drive her to Resurrection Immediate Care in Elmwood Park.

At Resurrection Immediate Care, petitioner testified, she noticed that she could barely walk due to the severe pain. At Resurrection Immediate Care, petitioner had x-rays taken. She was also fitted with a hinged knee brace and told to remain off work.

From Resurrection Immediate Care in Elmwood Park, Ms. Steele returned home. Due to the pain, she found it hard to sit down or to lie in bed.

She began treating with Amit Mehta, M.D. of Instant Care. He ordered an MRI and physical therapy, which underwent she at West Suburban Hospital. Dr. Mehta also prescribed the Hydrocodone and Naproxen. Dr. Mehta injected the petitioner.

The staff at Resurrection Immediate Care referred her to Gregory Crovetti, M.D., at Trinity Orthopedics. Dr. Crovetti prescribed a back brace that she still wears. She displayed such brace to the Arbitrator.

Petitioner testified that she returned to work on August 23, 2010, but that she really should not have gone back to work when she did. She said she then experienced pain with all the standing, and pain up and down her legs (left more than right). She experienced pain from twisting her body as a cashier, pain in her shoulders and pain in her left knee. She further testified that she had to take additional breaks at work due to the pain.

Petitioner returned to Dr. Crovetti on November 30, 2010. Dr. Crovetti reinstituted conservative treatment. (Px.5)

Petitioner testified to the following: On Jan. 18, 2011, she was stopped in her car at a light when she was rear ended by another vehicle. There was no damage to either vehicle. The impact was barely a tap although it moved her vehicle a couple of inches. Petitioner testified that she was not

hurt and no one else was hurt as a result of such motor vehicle collision.

Petitioner's mother was a passenger and testified as a witness that she "didn't notice any impact."

Dr. Crovetti later referred the petitioner to Mark Sokolowski, M.D., for further treatment.

Dr. Sokolowski ordered and performed injections.

Dr. Sokolowski has now recommended surgery. He has offered the petitioner either a lumbar decompression at L5-S1, which would be intended to relieve her radiculopathy symptoms, or a lumbar decompression and fusion at L5-S1, which would be intended to relieve her radiculopathy symptoms and back pain. (Px.12, pp. 11-12)

Dr. Sokolowski referred Petitioner to Dr. Patodia for pain management.

Two sets of MR images of petitioner's lumbar spine were taken. One set was taken on July 2, 2010 and the other set was taken on November 1, 2011.

George G. Kuritza, M.D., offered the following impression of the 7/2/10 images:

1. At the L5-S1 level, there is mild loss of normal hydration of this nucleus pulposus representing early desiccation changes.
2. At the L5-S1 level, there is a 3-4 mm. far left intraforaminal disk herniation indenting the ventral and left side of thecal sac with mild left lateral recess narrowing seen.
3. The rest of the lumbar spine appeared unremarkable. (Px.3)

Navraj Grewal, M.D., interpreted the 11/1/11 images. At L5-S1, he found disc desiccation, some minimal left neural foraminal narrowing and a 2 mm. broad-based disc bulge. He then offered this impression:

> Some degenerative disc disease at L5-S1 with minimal left neural foraminal narrowing at this level. The remainder of the lumbar spine is unremarkable. There is no spinal stenosis. (Px.8)

Currently, petitioner testified, she experiences pain in her low back and left knee. She stated that since June 28, 2010, her left knee has gotten better. She further testified that when she walks, he left knee flares up, her buttocks go numb and her low back hurts. She testified that she has pain after walking half a block. She testified that she has pain if she stands for 20 minutes and has pain if she sits for a long period of time.

Petitioner testified that she has had no other accidents since June 28, 2010. She has not worked anywhere since she stopped working at Binny's on November 29, 2010.

At the request of the respondent, and pursuant to Section 12 of the Act, Jesse P. Butler, M.D.,

examined petitioner. Dr. Butler later testified on behalf of the respondent.

CONCLUSIONS OF LAW

F. Is petitioner's current condition of ill-being is causally related to the injury?

The arbitrator finds that petitioner's current condition of ill-being is causally related to the injury of June 28, 2010.

On August 16, 2010, Dr. Crovetti concluded that petitioner was doing much better with regard to her work-related injury. However, she had been in an emergency room that morning for a non-work-related condition. Dr. Crovetti concluded "At this time, I would allow her to return to full duty later this week once the gastroenteritis is cleared and have her follow up with me on a p.r.n. basis."

On August 19, 2010, Dr. Mehta examined her and found that she had no pain related to the work-related accident, and was fully functional and had no pain issues. He discharged her from care at maximum medical improvement.

When petitioner returned to Dr. Crovetti on November 30, 2010, Dr. Crovetti took the following history:

"Patient returns today complaining of reaggravation of lower back pain with associated bilateral buttock pain radiating down into the legs. The patient has previously been seen and treated for sacroiliitis and lumbosacral spasming as well as left knee pain in the past. The pain stemmed from the incident where she slipped on a wet floor and fell at work. She has been released back to full duty and notes that over the last week with the prolonged standing and that was required from her job, she has begun experiencing pain particularly on the left side with spasming and pain in the buttock radiating down into the legs and the left knee. She denies any new trauma associated with onset of symptoms and has been taking over-the-counter Ibuprofen with only mild alleviation of her symptoms . . . My impression is that this is a 28-year-old female with reaggravation of existing lumbosacral spasming and sacroiliitis secondary to prolonged standing that is required in her job." (Px.5)

When Dr. Crovetti saw the petitioner on January 6, 2011, the doctor noted that her low back pain was 6/10 and that she had no leg pain. (Px.5) Dr. Crovetti came up with the following plan:

"At this time, I would continue doing the physical therapy. I would continue the Naproxen and increase that to twice a day. Continue to wean off the Nucynta and Lyrica. I feel that if she continues to improve, we should be able to return her to more full time type of work within two weeks." (Px.5)

On January 20, 2011, petitioner returned to Dr. Crovetti. Dr. Crovetti took the following history:

"She returns at this time. She was doing well until Tuesday of this week, when she states she was involved in a motor vehicle accident where she was rear-ended. She was with the pain down to about 2/10 after the accident, and her pain was backup (sic) to 5/10 and has gone backup (sic) on Nucynta to twice a day and continuing the Naproxen twice a day. She states today in therapy, she had some discomfort going into her left leg during the therapy." (Px.5)

Dr. Crovetti later referred petitioner to Dr. Sokolowski. (Px.5)

During the deposition of Dr. Sokolowski, the following exchange took place on cross-examination:

Q: So, you think a three-month gap is just waxing and waning; is that correct?

A: You told me September and October she had no symptoms. I would say it is possible for a person to have no symptoms for a two-month period, and then have a run of symptoms in precisely the same distribution. The coincidence would be remarkable if she had return of pain when she never had pain before her accident, and now has return of pain in exactly the same spot that she had it before is too much of a coincidence to disrupt the causal connection. (Px.12, p. 47)

In his report dated April 29, 2011, Dr. Butler wrote:

"Medical documentation supports a causal relationship for care and treatment between June 28, 2010 and August 20, 2010. The documentation concerning her "reaggravation" in November 2010 does not substantiate any work-related injury. The onset of her back pain could be related entirely to deconditioning and obesity. There is no documentation of any specific work activity that brought about her symptoms other than standing. I do not find this to be a valid mechanism of injury. Even if one considers that standing is an injury, her symptoms improved with conservative care until a rear end motor vehicle collision in January 2011. The patient's failure of conservative treatment subsequent to the MVA is most likely the result of a motor vehicle collision as opposed to a work injury from June 28, 2010. It is interesting that despite the documentation of a motor vehicle collision with worsening subjective complaints that no additional imaging was obtained."

The arbitrator finds the opinions of Dr. Sokolowski to be more persuasive than those of Dr. Butler.

In Vogel v. Indus. Comm'n, 354 Ill. App. 3d 780, 821 N.E.2d 807 (2d Dist., 2005), the court held that they have recognized repeatedly that when the claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain.

As with the claimant in Vogel, the petitioner had not fully recovered from the work-related accident and had not been released to full-duty work at the time she was involved in the motor vehicle accident.

J. **Were the medical services that were provided to petitioner were reasonable and necessary? Has respondent paid all appropriate charges for all reasonable and necessary medical services?**

The arbitrator finds that the medical services that were provided to petitioner were reasonable and necessary.

Petitioner submitted an Exhibit List in which total bills are listed. Such Exhibit List was not offered into evidence.

Petitioner failed to list, on Ax.1, the unpaid medical bills.

The arbitrator orders respondent to pay petitioner an amount equal to the sum of the unpaid medical bills in Px.4, Px.6, Px.9 and Px.11, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

K. Is petitioner is entitled to any prospective medical care?

As the arbitrator has found Dr. Sokolowski's opinions to be more persuasive than those of Dr. Butler, the arbitrator finds that petitioner is entitled to the prospective medical care that Dr. Sokolowski has recommended and petitioner desires.

L. What temporary benefits are in dispute (TTD)?

Based on the above findings and conclusions, the arbitrator further finds that petitioner is entitled to TTD benefits from 06/28/10 through 08/19/10 and from 11/30/10 through 07/24/12. Respondent is entitled to a credit in the amount of $7,675.32 for TTD benefits previously paid.

M. Should penalties or fees be imposed on respondent?

The arbitrator finds that penalties and fees are not warranted in this case. Respondent's dispute with regard to causation was a bona fide dispute. Dr. Butler examined petitioner and rendered opinions.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Rodriguez,

Petitioner,

vs.

No. 10WC037099

14IWCC0017

Menards,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, reverses the decision of the Arbitrator for the reasons stated below.

FACTS

At the arbitration hearing, Petitioner testified that he worked as a salesman for Respondent at the time of the September 1, 2010, undisputed accident. That day, Petitioner drove a company pick-up truck through Respondent's parking lot to reach his designated parking space, and as he turned to his left to check for oncoming traffic, the truck hit the concrete base of a light post. Petitioner's right shoulder struck the steering wheel of the truck on impact and he experienced immediate right shoulder pain. Petitioner estimated that the truck was traveling at the speed of five to seven miles per hour at the point of impact. Prior to the undisputed accident, Petitioner had no right arm injuries or problems. On cross examination, Petitioner testified that he did not brace himself before the truck hit the light post. Petitioner acknowledged that he played recreational racquetball from 1991 until about 2005.

On the date of the undisputed accident, Petitioner sought treatment at the Rush Copley Occupational Medicine Clinic and complained of pain in his right shoulder and left leg, along with a head injury. Petitioner reported sustaining his injuries when he struck a light pole with a company pick-up truck, hitting his right shoulder on the steering. Dr. Oana Patrascu diagnosed Petitioner with a right shoulder contusion, a closed-head injury, and a left leg abrasion and contusion; prescribed Tylenol with Codeine; recommended that Petitioner apply ice to his right shoulder and perform shoulder exercises; and released Petitioner to work with restrictions of no over-the-shoulder work with the right arm and no driving for two days. Dr. Patrascu noted that "[t]his is a work-related injury."

On September 3, 2010, Petitioner returned to Rush and treated with Dr. Paul Copps. Petitioner complained of worsening right shoulder pain rated six out of ten, and difficulty sleeping and moving his right shoulder due to pain. Dr. Copps diagnosed Petitioner with a right shoulder contusion, a left leg abrasion, and a history of a closed-head injury; recommended that he apply ice to his shoulder, wear a sling while working and continue taking Tylenol with Codeine; and released Petitioner to work with restrictions of no work using the right arm and no driving at work. Dr. Copps noted that "[t]his is a work-related injury."

On September 7, 2010, Dr. Copps reexamined Petitioner who reported feeling moderately better although he continued to rate his right shoulder pain as six out of ten. Petitioner also reported that he had increased movement in his right shoulder but he had developed some ecchymosis on the lateral aspect of the shoulder. Petitioner's left leg injury was also improving and he reported having a mild amount of pain from his head injury. Dr. Copps reiterated his diagnoses, treatment recommendations and work restrictions from the previous appointment, and recommended that Petitioner begin physical therapy. Dr. Copps continued to note that Petitioner had sustained a work-related injury.

On September 14, 2010, Petitioner reported that he had no right shoulder pain after two physical therapy sessions and had almost normal movement. Petitioner also reported that his left leg abrasion was healing well and he had no concerns with respect to his head injury. Dr. Copps diagnosed Petitioner with a contusion, left leg abrasion and a history of a closed head injury; and recommended that Petitioner attend physical therapy, apply ice as needed and continue taking Tylenol with Codeine; and released Petitioner to work with restrictions of no lifting more than 15 pounds with the right arm. Dr. Copps reiterated that Petitioner had sustained a work-related injury.

On September 20, 2010, Petitioner reported that his right shoulder pain had returned, rating it as three out of ten, and he had difficulty sleeping secondary to pain. Dr. Copps diagnosed Petitioner with a right shoulder strain and contusion, a left leg abrasion and a history of a closed-head injury; recommended that he continue physical therapy and take Tylenol with Codeine as needed; and released him to work with restrictions of no lifting more than 15 pounds with the right arm. Dr. Copps continued to note that Petitioner had sustained a work-related injury.

On September 27, 2010, Petitioner filed an Application for Adjustment of Claim, alleging that on September 1, 2010; he sustained injuries to his right shoulder, right arm, left leg and man as a whole in a work-related motor vehicle accident.

On September 28, 2010, Petitioner rated his right shoulder pain as one out of ten. However, Petitioner also reported that he woke up that morning with considerable right shoulder pain and continued to have sharp pain that worsened with movement. Petitioner noted that he did not feel physical therapy had helped. Dr. Copps diagnosed Petitioner with a right shoulder contusion and strain; recommended that he continue physical therapy, begin H-wave therapy and take Ibuprofen as needed; and released Petitioner to work with restrictions of no lifting more than 15 pounds with the right arm. Dr. Copps noted that he would consider an orthopedic referral and an MRI if Petitioner's pain did not improve in the next two to three weeks. Dr. Copps continued to note that Petitioner had sustained a work-related injury.

On October 13, 2010, Petitioner underwent a right shoulder MRI at Dr. Copps's recommendation, which showed a complete full-thickness tear of the supraspinatus tendon, glenolabral articular disruption of the posterior inferior labrum, tendinopathy with partial tearing of the infraspinatus tendon and mild tendinopathy of the biceps tendon.

On October 21, 2010, Petitioner treated with Dr. Arif Saleem at Dr. Copps's request. Petitioner reported having right shoulder pain since September 1, 2010, which he rated as four to five out of ten. Petitioner also reported having significant right shoulder pain at night, weakness when lifting objects and an inability to perform overhead activities. Dr. Saleem reviewed Petitioner's MRI, diagnosed Petitioner with a large rotator cuff tear with impingement and acromioclavicular arthritis, and recommended that Petitioner undergo an arthroscopic rotator cuff repair.

On November 17, 2010, Dr. Hythem Shadid, an orthopedic surgeon, conducted a section 12 examination on Respondent's behalf, and prepared a report on December 2, 2010. Dr. Shadid diagnosed Petitioner with a chronic right shoulder rotator cuff tear with degenerative changes. Dr. Shadid opined:

> "The overall picture is that of chronic repetitive overhead activities over many years. An example of that would be years of playing racquetball, but these findings are not limited to a single activity. While there was no objective evidence of any acute injuries, the jolt from the low speed collision could have caused a very mild aggravation of his pre-existing condition, but that would have resolved within a few days to two weeks."

Dr. Shadid also opined that Petitioner would have continued complaints of weakness and a persistent right shoulder ache. Petitioner had reached maximum medical improvement.

On March 14, 2011, Petitioner underwent a right shoulder arthroscopic rotator cuff repair, subacromial decompression, distal clavicle excision and biceps tendon tenotomy.

At his March 24, 2011, evidence deposition, Dr. Saleem testified that the September 1, 2010, motor vehicle accident aggravated Petitioner's pre-existing right shoulder rotator cuff tear; however, based on the size of the tear, it was not the sole cause of the tear. Dr. Saleem was unsure of how much strength and motion Petitioner would regain in light of his large rotator cuff tear, which usually results in long-term restrictions. On cross examination, Dr. Saleem disagreed with Dr. Shadid's opinion that Petitioner suffered a mild aggravation of a pre-existing rotator cuff tear that would have resolved within a few days or weeks because Petitioner's right shoulder continued to bother him beyond that time. Dr. Saleem opined that the work-related accident could have aggravated Petitioner's rotator cuff tear regardless of the pick-up truck's speed at the time of the accident. By itself, Petitioner's racquetball playing did not cause the development of his rotator cuff tear.

On April 14, 2011, Petitioner returned to Dr. Saleem who noted that he was doing well and could transition from a brace to a splint. Dr. Saleem recommended that Petitioner continue physical therapy. Petitioner testified that Dr. Saleem released him to light duty work at this time.

At his May 11, 2011, evidence deposition, Dr. Shadid testified that Petitioner's MRI showed no acute injuries. Dr. Shadid opined that Petitioner had an arthritic and chronic rotator cuff tear that is commonly seen in athletes who play overhead sports and people who perform manual labor. Petitioner might have sustained a temporary aggravation of his right shoulder rotator cuff tear if he were bracing himself just before the truck hit the light pole base; however, Petitioner reported that he did not brace himself just before the accident.

On May 12, 2011, Dr. Saleem reevaluated Petitioner. On examination, Petitioner had full passive range of motion. Dr. Saleem noted that Petitioner was doing well and was going to take a three week break from physical therapy because he obtained a new job with a different employer.

On June 13, 2011, Petitioner returned to physical therapy and his therapist noted that he was able to perform all activities of daily living without increased pain. The therapist recommended that Petitioner undergo additional physical therapy to increase his strength and stability. Petitioner testified that Dr. Saleem discharged him from care on July 28, 2011.

Petitioner testified that he can currently perform very few overhead activities with his right arm, resulting in the increased use of his left shoulder. Petitioner's right shoulder has "locked up" on one occasion since being released to full duty work and he cannot lift objects as he did prior to the accident. Petitioner's right shoulder is sore when he wakes up and he takes over-the-counter pain medication in the morning. Petitioner works as a salesman for a different employer and carries a satchel or case of pamphlets every day. At the end of his work day, he experiences some soreness in his right shoulder.

DISCUSSION

The Arbitrator found Petitioner failed to prove that a causal connection exists between his current condition of ill-being and the September 1, 2010, undisputed work accident. The Commission disagrees.

The Commission finds that the medical records fully support Petitioner's claim that his current right shoulder condition is causally related to the undisputed accident. The medical records show that on the date of the accident, Petitioner began to complain of right shoulder pain, and continued to complain of right shoulder symptoms despite conservative treatment. The Commission notes that the treating physicians at Rush consistently noted that Petitioner's injuries were work-related. At Dr. Copps's referral, Dr. Saleem evaluated Petitioner and diagnosed him with a complete full thickness rotator cuff tear, which required surgery. The Commission finds Dr. Saleem's opinion that the undisputed accident aggravated Petitioner's pre-existing rotator cuff tear, more persuasive than Dr. Shadid's opinions. The Commission finds it significant that Petitioner was able to perform his full duties before the undisputed accident. Dr. Shadid's emphasis on whether Petitioner braced for the impact at the time of the accident is irrelevant as the mechanism of injury was sufficient to cause a right shoulder injury based on the medical records and Dr. Saleem's opinions. The Commission awards Petitioner all medical expenses related to his right shoulder condition. The Commission also awards Petitioner temporary total disability benefits from March 14, 2011, through April 14, 2011.

With respect to permanency, the Commission finds that Petitioner's injuries caused the loss of the person as a whole to the extent of 12.5 percent. The September 1, 2010, undisputed accident aggravated Petitioner's pre-existing right shoulder rotator cuff tear, requiring Petitioner to undergo a right rotator cuff repair, subacromial decompression, distal clavicle excision and biceps tendon tenotomy. On May 12, 2011, Dr. Saleem noted that Petitioner had full passive range of motion on examination and was doing well.[1] Petitioner testified that Dr. Saleem released him to full duty work on July 28, 2011. Petitioner works as a salesman and carries a satchel every day, which causes some right shoulder soreness at the end of the day. Petitioner can perform very few overhead activities with his right arm and as a result, has increased the use of his left arm. Petitioner also has right shoulder soreness in the morning and takes over-the-counter medication.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on February 19, 2013, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner all medical bills related to his right shoulder condition under §8(a) and §8.2 of the Act and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $345.60 per week for 4-4/7 weeks, from March

[1] The Commission notes that the record contains no other medical records from Dr. Saleem after May 12, 2011.

14, 2011, through April 14, 2011, which is the period of temporary total disability for which compensation is payable.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $311.04 per week for a period of 62.5 weeks, as provided in §8(d)2 of the Act, because the injuries sustained caused permanent partial disability equivalent to 12.5 percent loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $22,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 15 2014
MB/db
o-12/11/13
44

Michael J. Brennan

Charles J. DeVriendt

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0017

RODRIGUEZ, JOSEPH
Employee/Petitioner

Case# 10WC037099

MENARD INC
Employer/Respondent

On 2/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0787 FOOTE MEYERS MIELKE & FLOWERS
CRAIG S MIELKE
3 N SECOND ST SUITE 300
ST CHARLES, IL 60174

0445 RODDY LEAHY GUILL & ZIMA LTD
SAM J CERNIGLIA ESQ
303 W MADISON ST SUITE 1500
CHICAGO, IL 60606

14IWCC0017

STATE OF ILLINOIS)
)SS.
COUNTY OF Kane)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Joseph Rodriguez
Employee/Petitioner

v.

Menard,Inc.
Employer/Respondent

Case # **10** WC **37099**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arb. George Andros**, Arbitrator of the Commission, in the city of **Geneva**, on **12/13/2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **09/01/2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$26956.80**; the average weekly wage was **$518.40**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **1** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

BASED UPON THE FIINDING OF NO CAUSATION, COMPENSATION IS HEREBY DENIED.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

February 15,2013
Date

FEB 19 2013

JOSEPH RODRIGUEZ V. MENARD , Inc. 10 WC 37099

With respect to issue (F), is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds the following facts :

This Petitioner testified that he was an outside contract salesperson for the Respondent. On September 1, 2010 when returning from sales calls, he was in the company parking lot when his pickup truck struck the concrete base of a light pole. He was driving approximately five miles to seven miles per hour. The impact did not activate the airbag. His right shoulder struck the steering wheel.

The Arbitrator heard the testimony and studied the video. Rx 3.

Petitioner presented to Rush Copley Medical Center on September 1, 2010. Px 13. The Petitioner eventually had shoulder surgery on March 14, 2011 Px 2. The operative report gives a postoperative diagnosis of right shoulder massive rotator cuff tear, right shoulder impingement, right shoulder acromioclavicular joint arthritis, and right shoulder degenerative biceps tear.

Dr. Arif Saleem M.D. of Castle Orthopedics testified the trauma could cause an aggravation to a rotator cuff tear, but looking at the shoulder and scope and size of the tear, it would unlikely be the sole source of injury to cause this magnitude of a rotator cuff tear. P 8. On cross-examination he again states the extent of the injury is likely not caused by the trauma. He goes on to state that whether there was an aggravation of this tear, it certainly could have been aggravated by an injury. Doctor's subspecialty is shoulders and elbows. P 4.

Dr. Saleem is then asked how much force would that trauma need to be to cause an aggravation and the doctor states it depends on how weak the tendon is before the trauma occurred. When asked if the vehicle striking a light post without airbag deployment would be sufficient to cause the rotator cuff tear Dr. Saleem states that "unless the tear – the tendon was already a weak tendon to start with and the patient was using their arms to support themselves, had a contraction of their arms, that you could potentially exacerbate or tear further a tendon that is already torn, if you have a weak tendon to start with". P 19.

The Arbitrator read and re-read both depositions. By the end of cross examination and more so at the end of redirect examination, I was certain that the balance of the preponderance was tipping away from his (Dr. Saleem's) opinion.

Dr. Hythem P. Shadid, Respondent's section 12 examiner, Rx 2, states there was nothing of any acute nature on the MRI with respect to the rotator cuff tear. Moreover, the Petitioner's years of racket ball activity could be a causative factor for the chronic degenerative changes seen in this Petitioner. Dr. Shadid opined Petitioner, probably in the worst case scenario, might have had a very temporary aggravation to his shoulder from this vehicle accident. That also assumes that the Petitioner was bracing himself in order to stress the shoulder. P 15. However, the Petitioner stated that he had no awareness and no preconceived apprehension about the impending accident and so he would not have been holding on to the steering wheel in a way with any force to brace himself against the hit. P 16) The expert viewed the video and there just was not much force involved in the accident. P 16.

When asked if Dr. Shadid had an opinion with respect to the incident of September 1, 2010 aggravating the preexisting condition, Dr. Shadid testified that it should have aggravated the situation if Petitioner was wrong about anticipating the hit. It is possible that it could have aggravated it but it would have been a temporary aggravation. P 17. Dr. Shadid has undergraduate degrees in engineering and mechanical engineering from University of Illinois along with residencies in general surgery and orthopedic surgery at University of Illinois.

Given all the evidence in this particular case, the medical opinion of the section 12 expert was more persuasive on the issue of causation. The Arbitrator makes the inference after reviewing all the evidence and testimony that relative to the concept of aggravation, that the minor injury may have manifested some symptoms of the underlying pathology but given the surgery, the preexisting condition was not aggravated in the sense of compensability under the Workers Compensation Act.

Based upon the totality of the evidence and a preponderance thereof, the Arbitrator finds as a matter of law and finding of fact there is no causal connection between the injury on September 1, 2010 and the present condition of ill being as found in situ at surgery or post recovery.

Therefore the issues of TTD benefits, medical bills and nature and extent will not be addressed.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Arscott,
Petitioner,
vs.
Conway Freight, Inc.,
Respondent,

NO: 12 WC 3876
14IWCC0018

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of permanency and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission viewed the evidence differently than the Arbitrator and finds Petitioner lost 25% of the use of his left leg under Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 53.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 25% loss of a leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for $23,364.63 paid to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $37,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

JAN 16 2014
DATED:

MB/jm
O: 12/19/13

43

Mario Basurto

David L. Gore

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
AMENDED

ARSCOTT, MICHAEL
Employee/Petitioner

Case# **12WC003876**

14IWCC0018

CON-WAY FREIGHT
Employer/Respondent

On 1/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0154 KROL BONGIORNO & GIVEN LTD
CHARLES R GIVEN
100 W MONROE ST SUITE 1410
CHICAGO, IL 60603

RUSIN MACIOROWSKI & FRIEDMAN LTD
SARAH L TRIPP
239 S LEWIS LANE
CARBONDALE, IL 62901

14IWCC0018

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION PURSUANT TO SECTION 19(F)
NATURE AND EXTENT ONLY

Michael Arscott
Employee/Petitioner

v.

Con-Way Freight
Employer/Respondent

Case # 12 WC 3876

Consolidated cases: n/a

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **December 6, 2012**. By stipulation, the parties agree:

On the date of accident, **January 10, 2012**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $**93,641.60**, and the average weekly wage was $**1,800.79**.

At the time of injury, Petitioner was **57** years of age, ***married*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**16,290.82** for TTD, $**6,973.81** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**23,264.63**. The parties stipulated that all periods of TTD and TPD benefits were paid correctly at the correct rate.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**695.78**/week for a further period of **43** weeks, as provided in Section **8** of the Act, because the injuries sustained caused **permanent partial disability to the extent of 20% of the left leg**.

Respondent shall pay Petitioner compensation that has accrued from **August 7, 2012 (MMI)** through the present, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

1-23-2013
Date

JAN 24 2013

14IWCC0018

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL ARSCOTT,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 12 WC 3876
	)	
CON-WAY FREIGHT, INC.,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner has been employed as a freight truck driver sales representative for the respondent since 1987. On January 10, 2012, he injured his left knee while exiting his tractor. Accident was not disputed. He initially was recommended physical therapy, but was shortly thereafter recommended an MRI scan. This was performed on January 28, 2012, and demonstrated a torn meniscus. See PX2.

The petitioner was thereafter recommended arthroscopic repair. He underwent the surgery to repair the meniscus on May 22, 2012. He underwent postoperative physical therapy and was released to full duty work on July 2, 2012. On August 7, 2012, he was discharged by Dr Petsche at maximum medical improvement. He had been working full duty at that point and was instructed to continue. See generally PX1.

On October 24, 2012, the respondent had Dr. Sanjay Patari, an orthopedist, perform an AMA Impairment Examination. His report noted a finding of 20% impairment to the lower extremity, or 8% disability to the person. PX3, RX3.

At trial, the petitioner testified that he had been working his regular duties as before the accident, with the same shift and hours. He continues to perform home exercise and takes over the counter medications as needed. He does not use a knee brace.

OPINION AND ORDER

Nature and Extent of the Injury

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per

820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

Applying this standard to this claim, the Arbitrator notes as follows:

(i): Dr. Patari found a PPI rating of 20% of the lower extremity, which translates to 8% person as a whole.

(ii): The claimant was employed as a driver sales representative for the respondent since 1987 and has returned to his usual employment as of the trial date.

(iii): The claimant was 57 years old as of the date of loss.

(iv): The claimant was released to his regular job by his treating physician and continues to work in that position as before the incident.

(v): The claimant described some residual symptoms in the knee, which are generally consistent with the surgery performed.

The claimant has undergone meniscal repair surgery. The evidence adduced substantiates loss to the petitioner's left leg to the extent of 20% thereof; as such, the respondent shall pay the petitioner the sum of $695.78/week for a period of 43 weeks, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with comment	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Timothy Sandifer,

Petitioner,

vs.

NO: 11 WC 38235

14IWCC0019

Piasa Commercial Interiors,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of average weekly wage, causal connection, extent of temporary total disability, medical expenses, prospective medical care and whether Petitioner exceeded his choice of physicians and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

The Commission modifies the Arbitrator's Decision. Regarding average weekly wage, the Commission notes that Petitioner testified on cross-examination that he agreed that if he were to count the days from the time he returned to work for Respondent in November 2010 to July 5, 2011, he had worked for Respondent for approximately 33 weeks and a few days. However, the Rx3 wage statement shows that out of the 52 week proceeding July 5, 2011, Petitioner actually worked 95 days, or 19 workweeks. During that period, Rx3 shows Petitioner did not work for 48 days. Petitioner earned $26,602.20 during that period. From week ending November 16, 2010 through April 26, 2011, Petitioner earned $34.73 per hour. From week ending May 17,

2011 through July 5, 2011, Petitioner earned $35.38 per hour. $26,602.20 ÷ 19 workweeks = $1,400.11 average weekly wage. The Commission finds that Rx3 is the best evidence of what Petitioner actually earned during the 52 week period preceding July 5, 2011. Rx3 did show an hourly rate if dividing earnings for a particular week by the hours worked during that week. The Commission modifies Petitioner's average weekly wage to $1,400.11. This yields a TTD rate of $933.40.

The Commission affirms the Arbitrator's finding that Petitioner was temporarily totally disabled from July 6, 2011 through October 3, 2012, the date of arbitration, a period of 65-1/7 weeks. Respondent paid Petitioner TTD benefits at the rate of $960.00 and this was based on an average weekly of $1,440.00. However, as indicated above, the average weekly wage of $1,400.11 yields a TTD rate of $933.40. Therefore, Respondent overpaid Petitioner by $26.60 per week ($960.00 - $933.40). Respondent is entitled to credit for overpayment of TTD benefits of $1,732.81 ($26.60 per week X 65.143 weeks) and the Commission awards same.

Regarding choice of physicians, the Commission agrees with the Arbitrator that chiropractor Dr. Althardt should not be considered a choice as Petitioner did not want to see him and his supervisor had taken him there. However, the Arbitrator found Dr. Raskas to be Petitioner's first choice of physician, which the Commission does not agree with. Petitioner was seen at Greenville Regional Hospital ER on July 8, 2011 and the Commission agrees with the Arbitrator that this was for emergency care. The Commission notes that the medical records show that the ER did not refer Petitioner to Dr. Sola; the ER notes indicate that Petitioner was to follow-up with his primary care physician. Petitioner subsequently saw Dr. Sola on July 13, 2011 for an initial evaluation for his back and it was noted that there was no referral. Therefore, the Commission finds that Dr. Sola was Petitioner's first choice of physician as Petitioner chose to treat with Dr. Sola. The Commission finds that Dr. Raskas was Petitioner's second choice of physician. The Commission affirms the Arbitrator's finding that Petitioner did not exceed his choice of physicians under §8(a) of the Act. The Commission affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $933.40 per week for a period of 65-1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $110,666.50 for medical expenses under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize in writing and pay for the treatment recommended by Dr. Raskas pursuant to the Medical Fee Schedule.

14IWCC0019

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury. The Commission notes that Respondent paid $62,537.28 for TTD benefits ($960.00 X 65.143 weeks) and this results in an overpayment of $1,732.81 which is to be credited against any future award.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 16 2014
MB/maw
o12/19/13
43

Mario Basurto

Michael J. Brennan

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

SANDIFER, TIMOTHY
Employee/Petitioner

Case# **11WC038235**

14IWCC0019

PIASA COMMERICAL INTERIORS
Employer/Respondent

On 11/27/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0167 DOWD & DOWD LTD
ELLINA KHOTIMLYANSKY
617 W FULTON ST
CHICAGO, IL 60661

14IWCC0019

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TIMOTHY SANDIFER
Employee/Petitioner

v.

PIASA COMMERCIAL INTERIORS
Employer/Respondent

Case # 11 WC 38235

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **October 3, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other: Did Petitioner exceed his choice of physicians under Section 8(a) of the Act?

FINDINGS

On the date of accident, **07/05/2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$74,880.00**; the average weekly wage was **$1,440.00**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit for **any and all TTD paid**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $960.00/week for 65 1/7 weeks, commencing July 6, 2011 through October 3, 2012, as provided in section 8(b) of the Act. Respondent shall have credit for any amounts previously paid.

Respondent shall pay for the reasonable and necessary medical expenses contained in Petitioner's Exhibit 1, totaling $110,666.50, but shall have credit for any amounts previously paid and hold Petitioner harmless from any claims by any providers of the services for which Respondent claims credit. Respondent shall authorize and pay for the surgery recommended by Dr. Raskas. Petitioner did not exceed his choice of physicians under Section 8(a) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

11/19/2012
Date

ICArbDec19(b)

NOV 27 2012

14IWCC0019

STATE OF ILLINOIS)
)SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TIMOTHY SANDIFER
Employee/Petitioner

v. Case # 11 WC 38235

PIASA COMMERICAL INTERIORS
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Timothy Sandifer, is employed as a carpenter for Respondent, Piasa Commercial Interiors. (Arbitration Transcript (AT), p. 33). On July 5, 2011, Petitioner sustained undisputed accidental injuries when his back gave out while moving a 110-120 lb. bundle of group studs. (AT, p. 34). He felt a "pop" and immediate pain. (AT, p. 34). He testified that he had never experienced such a painful sensation before in his life; he felt he was nearly paralyzed and could hardly move his legs without extreme pain. (AT, p. 34-35). He dropped the studs, as he could barely move. (AT, p. 35). Petitioner notified his supervisor, Robert Howard, following the incident. (AT, p. 35).

Respondent does not dispute accident or notice. (Arbitrator's Exhibit (AX) 1). Respondent disputes causation, average weekly wage, medical as it pertains to choice of physician, prospective medical care, credit for overpayment in temporary total disability benefits, and nature and extent based upon its contention that Petitioner only suffered a lumbar strain and has reached maximum medical improvement (MMI). (AT, pp. 4-6; AX 1).

Mr. Howard testified that he was not on the scene when the accident occurred because he had gone to the lumber yard. (AT, p. 15). Mr. Howard also testified that he helped Petitioner limp to his (Petitioner's) truck without any other assistance; Petitioner testified that he was not assisted to his truck by his supervisor, but carried out to his truck by two other gentlemen, Chad Vonberg and Anthony Macon. (AT, p. 15; p. 36). Petitioner confirmed Mr. Howard's testimony that he was not on the scene when the incident occurred; Petitioner further testified that Mr. Howard was not there when he was carried out to his truck. (AT, p. 36). Mr. Howard testified that Petitioner was sitting up in the seat, but he observed that Petitioner was in a quite a bit of pain. (AT, p. 20). Petitioner testified that he reclined back as far as he could in the seat of a truck with no back seat. (AT, pp. 36-37).

Following the accident, Petitioner was driven by his supervisor to Althardt Chiropractic Clinic. (AT, p. 15). Petitioner's supervisor, Mr. Howard, initially testified that Petitioner did not specifically state where he wanted to go for treatment, but he later testified that Petitioner is the one who decided to go to the chiropractor. (AT, pp. 16-17; pp. 22-23). Petitioner testified in rebuttal that he specifically requested to go to the Greeneville Hospital Emergency Room, and his supervisor replied, "let's go here," meaning Althardt Chiropractic Clinic. (AT, p. 35-36; p. 49). Petitioner unequivocally testified that he did not choose Dr. R.T. Althardt as his first doctor. (AT, p. 41; p. 50; pp. 54-55). He testified that he felt as if he was required to do as his boss instructed. (AT, p. 49; p. 55). Petitioner did not know why Mr. Howard did not take him where he requested. (AT, p. 50). There is no known affiliation between Respondent and Dr. Althardt. (AT, pp. 21-22; p. 51). Both Petitioner and Mr. Howard have treated with Dr. Althardt in the past. (AT, pp. 17-18; p. 37). Petitioner testified that Mr. Howard told him that he goes to Dr. Althardt once per month. (AT, p. 53). Petitioner, however, had not sought treatment with Dr. Althardt for over seven years. (AT, p. 52; PX 3, Althardt Chiropractic, 2/21/05).

Dr. Althardt took a history of Petitioner's accident and performed a clinical examination that revealed positive straight leg rising on Petitioner's right and left sides. Petitioner reported pain and an inability to stand straight. Petitioner had -10 degrees range of motion in extension, low back pain greater on the left side, 25% limited flexion with discomfort, left and right lateral bending restriction, and muscle spasms. Dr. Althardt's impression was that Petitioner sustained a low back strain/muscle pull. He administered conservative care with Ibuprofen and ice packs, and kept Petitioner off work 3-4 days. He instructed Petitioner to return the next day. (PX 3, Althardt Chiropractic, 7/5/11). Petitioner testified that Dr. Althardt's treatment failed to provide any relief; he only returned to Dr. Althardt because he thought he had to. (AT, pp .40-41).

The next day, July 6, 2011, Dr. Althardt noted Petitioner's persistent pain and muscle spasms. (PX 3, Althardt Chiropractic, 7/6/11). Petitioner did not return to Dr. Althardt, but instead reported to the Greenville Hospital Emergency Room on July 8, 2011. (AT, p. 56; PX 4, Greenville Regional Hospital, 7/8/11). It was reported that Petitioner's back pain was "worse today." Petitioner's clinical impression was acute lower back pain. Petitioner was given an outpatient MRI of his lumbar spine, Vicodin, Flexeril, and instructed to follow up with a Dr. Sola. (PX 4).

Petitioner underwent the MRI of his lumbar spine on July 11, 2011, and reported to Dr. James Sola at Illinois Southwest Orthopedics on July 13, 2011, upon referral from the emergency room. (PX 4, Greenville Regional Hospital, 7/8/11, 7/11/11 [MRI report]; PX 5, Dr. Sola/Illinois Southwest Orthopedics, 7/13/11). Dr. Sola took the history of Petitioner's onset of acute back pain after an audible pop occurred while Petitioner was lifting metal studs. He noted that Petitioner was unable to hold on to the studs. Petitioner demonstrated clinical evidence of a lumbar strain. Dr. Sola interpreted Petitioner's MRI and noted that it demonstrated a fairly good size disk bulge at L3-L4 with neuroforaminal stenosis. He also believed that Petitioner may have sustained irritation of one of the nerve roots of his femoral nerve, due to his decreased patellar tendon reflex on his left side and discomfort in his right thigh. He recommended a Medrol Dosepak, anti-inflammatory medication, and a physical therapy program at Greenville Regional Hospital. (PX 5, Dr. Sola/Illinois Southwest Orthopedics, 7/13/11).

Petitioner returned to Dr. Sola on August 1, 2011, with some improvement in his symptoms. Dr. Sola recommended that Petitioner continue his physical therapy program at Greenville. (PX 5, Dr. Sola/Illinois Southwest Orthopedics, 8/1/11). On August 22, 2011, Petitioner presented to Dr. Irving at Greenville Regional Hospital for a rehab progress report after completing 16 sessions of physical therapy. Although Petitioner made progress through therapy, concerns were noted about easy and unexpected aggravation with minor tasks. Dr. Irving was concerned with the movement and loads Petitioner would have to perform at work, specifically heavy overhead work. Petitioner was instructed to undergo another week of physical therapy and report to Dr. Sola. (PX 4, Greenville Regional Hospital, 8/22/11).

On August 29, 2011, Petitioner reported to Dr. Sola with continued complaints of persistent back pain. Petitioner informed Dr. Sola that his back had gone out on him twice since his last visit on August 1, 2011. He had pain across his low back and more left thigh discomfort. Dr. Sola only recommended that Petitioner continue a home exercise program and anti-inflammatory medication. He instructed Petitioner to return in a month for re-evaluation. (PX 5, Dr. Sola/Illinois Southwest Orthopedics, 8/29/11).

When Petitioner returned on October 3, 2011, Dr. Sola noted that his back pain and discomfort persisted. (PX 5, Dr. Sola/Illinois Southwest Orthopedics, 10/03/11). He noted that Petitioner experienced more improvement when he was seeing a therapist, and referred Petitioner back to therapy for a month at Francis Physical Therapy. *Id.*; (PX 7, Francis PT, 10/10/11). The initial assessment at Francis Physical Therapy noted that Petitioner appeared to be recovering from disc displacement in the L3-L4 nerve distribution. Petitioner continued to show some neurologic deficit with absent reflex along with weakness in his myotome. Petitioner's problem list noted low back pain, decreased left hip flexion strength, decreased quad strength on his left, and limited work activities. (PX 7, Francis PT, 10/10/11).

On October 5, 2011, Petitioner presented to Dr. David Raskas. Dr. Raskas took a consistent history of Petitioner's accident and noted Petitioner's persistent complaints of lower back and left thigh pain, as well as pain that radiated up Petitioner's back. Although Petitioner could drive, walk, stand, and get dressed, he was unable to perform his duties and had been off of work since July 5, 2011. Petitioner had no prior back injuries of significance that inhibited his ability to work. Petitioner's pain was worsened by exercise, bending backwards or forwards, lying down, or general fatigue. He also noted that Petitioner's left knee jerk reflex was diminished compared to his right. Dr. Raskas viewed Petitioner's MRI and felt that it showed left lateralizing of the second from the last motion segment at L4-L5, and disc displacement in the foramen with loss of fat signal around the edge of the left exiting nerve root. X-rays revealed unusual appearance to the left facet and disc space narrowing at the lowest motion segment which he interpreted as mild degenerative disc disease of the lumbar spine. His impression after reviewing the diagnostic studies is that Petitioner's work accident caused a broad-based disc herniation that lateralizes to the left and impinges on the L4 nerve root at the L4-L5 level in the far lateral area, causing Petitioner's symptoms. He indicated in his report that, "Today, I explained to the patient the concept of his spinal injury and how the injury at work caused the disc herniation and the need for the treatment and the need for his work restrictions." Dr. Raskas gave Petitioner restrictions of no lifting, pushing, or pulling over 20 lbs.; no repetitive bending, stooping, or twisting at the waist; and instructed Petitioner to change his position from sitting, to

standing, to walking every 15-30 minutes. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 10/5/11).

Petitioner received an injection from Dr. Raskas's assistant, Dr. Hurford, and returned to Dr. Raskas on November 1, 2011. Petitioner did not experience any immediate relief, but experienced relief 5 days following the injection. His symptoms abated for 2-3 days, but began to steadily increase thereafter. He reported low back pain at 5 out of 10 on the pain scale and weakness in his left thigh despite modest improvement from physical therapy sessions held 3 times per week. Dr. Raskas recommended that Petitioner continue physical therapy and ordered a new MRI of his lumbar spine. Petitioner remained on restrictions. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 11/1/11; PX 8, St. Louis Spine and Orthopedic Surgery Center, 10/11/11).

On November 16, 2011, Petitioner returned to Dr. Raskas for follow-up after his MRI. Petitioner still reported lower back pain now radiating into his shoulders despite the brief improvement after the injection and 50% improvement in strength and flexibility from physical therapy. Petitioner still reported pain as 5 out of 10. Review of the MRIs showed a diffuse disc bulge at L4-L5 producing bilateral foraminal stenosis, worse on the left, and bilateral hypertrophic changes at the L4-L5. The study also showed a diffuse bulge at L3-L4, but it did not seem to produce foraminal stenosis. Dr. Raskas's assessment was a herniated nucleus pulposus at L4-L5. He continued Petitioner's physical therapy and restrictions. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 11/16/11).

Petitioner returned on December 12, 2011. Dr. Raskas noted that he recommended more physical therapy, but workers' compensation ceased paying for physical therapy. Since Petitioner was unable to undergo physical therapy, his condition worsened. Petitioner eventually resumed physical therapy shortly before the office visit and experienced some minor improvement, but he experienced an increased return of his pain in his back with permanent pain down into his leg. Petitioner reported pain as 4 out of 10. Dr. Raskas recommended continued physical therapy for another 4 weeks. If Petitioner did not improve, the doctor advised that he would consider discography. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 12/12/11).

Petitioner reported to Dr. Raskas on January 11, 2012, with continued back pain. Dr. Raskas noted that Petitioner had more pain with extension than flexion. He re-reviewed Petitioner's MRI scan. Petitioner had multi-level disc dehydration but he could not see a definite disc herniation; however, the MRI did not have any axial sections in it. Petitioner did not improve much with physical therapy. Petitioner's pain rating was 4-5 out of 10. Dr. Raskas recommended that Petitioner undergo bilateral facet blocks at L4-L5 and L5-S1 to alleviate his symptoms. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 11/11/12). Petitioner received the injections on January 26, 2012 and February 2, 2012. Petitioner did not experience any improvement following these injections; his pre-injection and post-injection pain ratings were identical on both occasions. (PX 8, St. Louis Spine and Orthopedic Surgery Center, 1/26/12, 2/2/12).

When Petitioner returned on February 17, 2012, his condition was significantly worse. Normal activities of daily living caused Petitioner pain. Any time Petitioner did any type of rotational movement, even picking up a plate out of the dishwasher, he experienced significant

back pain. When Petitioner engaged in any type of back movement, his pain would escalate from a 3-4 out of 10 to an 8-9 out of 10. Dr. Raskas recommended a discogram. He stated that the need for the discogram was directly attributable to his work injury. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 2/17/12).

Petitioner underwent a lumber discogram with a post-discogram CT on March 15, 2012. Petitioner described low back pain immediately upon the injection. The discogram demonstrated a posterior annular tear at L4-L5, which the contrast injection immediately extravasated through, with radiation down the left leg. Administration of intradiscal lidocaine did not alleviate Petitioner's symptoms. The radiologists' impressions included a classic positive discogram with an annular tear at L4-L5, and degenerative changes at L5-S1 with leakage of contrast either iatrogenic or through a small annular tear with some degenerative changes corresponding to discogram findings. (PX 9, Excel Imaging, 3/15/12).

Petitioner's immediate pain during the procedure escalated in severity even though he was on Tramadol, and Petitioner was hospitalized on March 22, 2012, with suspicion of an infection. He reported to the emergency room and attempted an outpatient trial of pain management with narcotic medication; however, this failed and the pain reoccurred. He experienced spasms and was unable to walk, so he was brought back via EMS and was admitted for pain control. It was noted that Petitioner attempted to reach Dr. Raskas when the Tramadol failed to control his symptoms. Petitioner was given several courses of various narcotic medications in an attempt to control his pain. Petitioner demonstrated positive straight leg rising bilaterally. Petitioner's exam was limited by his pain and inability to move. Obvious spasms on the paraspinal region on his left were noted. Review of his imaging studies showed that he had a mild disc bulge and bilateral facet arthritis at L3-L4 and a disc bulge eccentric to the left side at L4-L5 with severe left neuroforaminal narrowing and moderate right neuroforaminal narrowing. Petitioner's assessment was intractable back pain secondary to disc herniations and radiculopathy; acute on chronic back pain. Petitioner was placed on a Medrol dose pack and given oral Percocet. He was instructed to increase his activity very slowly and limit his activity until he could see his doctor for pain control. The attending physician attempted to contact physical therapy to provide Petitioner with an assistive device to make it easier for Petitioner to move around. (PX 4, Greenville Regional Hospital, 3/22-23/12).

Petitioner returned to Dr. Raskas on March 26, 2012. His pain rating was 10 out of 10. Petitioner constantly braced himself on the examination table throughout evaluation. Dr. Raskas noted that Petitioner was unable to stand and walk on his own without assistance and he had been having night sweats. Dr. Raskas opined that Petitioner needed to be admitted to the hospital and worked up for discitis. He stated that the need for the admission was directly related to Petitioner's work injury. (PX 6, Dr. Raskas/Orthopedic Sports Medicine & Spine Care Institute, 3/26/12).

Petitioner presented to Missouri Baptist Medical center for the evaluation. (PX 10, Missouri Baptist Medical Center). Petitioner was hospitalized for discitis at the L4-L5 level. (PX 6, Dr. Raskas/Orthopedic Sports Medicine & Spine Care Institute, 4/25/12). Petitioner was in severe acute pain as a result of a staph epidermis. Petitioner was on antimicrobial therapy and antibiotic therapy. *Id.*; (PX 11, Dr. Gutwein/St. Louis Infectious Diseases). Petitioner was down

to taking 4 Percocet a day and 1-2 Valiums when he returned to Dr. Raskas on April 25, 2012. He continued to walk with the use of a walker to control his pain. Dr. Raskas wished Petitioner to continue with conservative management as long as x-rays did not show any severe destruction to the point of instability. (PX 6, Dr. Raskas/Orthopedic Sports Medicine & Spine Care Institute, 4/25/12).

On May 30, 2012, Petitioner followed-up and demonstrated improvement with antibiotic treatment. Dr. Raskas started Petitioner on more physical therapy 3 times per week for 6 weeks. (PX 6). On July 11, 2012, Petitioner reported severe pain in his back and further reported that his activities of daily living were significantly limited. Dr. Raskas recommended fusion at the L4-L5 level. He stated that Petitioner would remain temporarily and totally disabled until the procedure was completed. He stated that Petitioner's need for surgery is directly related to Petitioner's work injury, not his discitis entirely. Petitioner's discitis was related to the work injury because the test that was used to treat the work injury caused the discitis. (PX 6, Dr. Raskas/Orthopedic Sports Medicine & Spine Care Institute, 7/11/12).

On May 1, 2012, Petitioner was examined by Dr. Keith Wilkey at the request of Respondent. He noted that Petitioner ambulated with the assistance of a walker and that his lower back pain was aggravated by activities of walking, bending, or twisting. After reviewing Petitioner's history and radiological exams, his assessment was internal disc derangement at L3-L4 and L4-L5, discitis, and probable discogenic back pain. He noted that Petitioner "obviously" could not return to work full-duty in his current condition. He stated that if non-steroidal medication, physical therapy and work hardening failed, surgery may be indicated. Dr. Wilkey opined that Petitioner's current diagnosis is directly and causally related to his work injury. (PX 14, Dr. Wilkey/IME, 5/1/12).

Petitioner testified that he desires to undergo the recommended surgery soon, due to the pain he experiences. (AT, p. 42). He testified that he experiences pain with any activity, accompanied by radiating pain and swelling into his private parts and legs. (AT, p. 42-43).

Regarding Petitioner's wage, Petitioner's supervisor, Mr. Howard, testified that Petitioner customarily made $34.25 an hour. (AT, pp. 11-14). Mr. Howard testified that Petitioner customarily worked a 40-hour week unless the weather was inclement or work was slow. (AT, pp. 10-11). This corroborated Petitioner's testimony. (AT, pp. 38-39). While Mr. Howard testified that Petitioner customarily made $34.25 an hour, he indicated that there had since been a raise that would make his figure off by up to $1-2. (AT, pp. 11-12). The payroll history reviewed by Petitioner's supervisor does not show Petitioner's hourly rate. (AT, p. 31). Respondent paid Petitioner benefits based on an average weekly wage of $1,440.00, $36 per hour times 40 hours per week. (AT, p. 5). This was the average weekly wage indicated on Petitioner's Application for Adjustment of Claim. (AX 2).

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner met his burden in proving that his current condition of ill-being is causally related to his undisputed work accident of July 5, 2011.

Accidental injury need not be the sole causative factor, or even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 797 N.E.2d 665, 672-673 (2003).

Following his undisputed work accident, Petitioner had immediate physical limitations and multiple objective signs of injury and disability that are verified by his physicians and documented in his medical records. Since the accident, Petitioner has been unable to work. Every physician who has treated Petitioner has attributed his physical condition to his work injury. Dr. Raskas opined that Petitioner's current condition of ill-being and all the treatment acquired as a consequence thereof is causally related to his work accident. Respondent's examiner under Section 12 of the Act, Dr. Wilkey, stated the same in his report.

Petitioner candidly reported that he treated with Dr. Althardt prior to the accident, and the medical records show that he did so in early 2005, over seven years prior to the accident. Dr. Raskas took note that any former back injuries sustained by Petitioner were insignificant and did not have any impact on Petitioner's ability to work. (PX 6, Dr. Raskas/St. Louis Spine Care Alliance, 10/5/11).

The Arbitrator notes that Dr. Wilkey's opinions are consistent with those of Dr. Raskas. There are no contrary opinions contained in the record. Consequently, the Arbitrator finds that Petitioner met his burden of proof in establishing causation.

Issue (G): What were Petitioner's earnings?

The Arbitrator finds that Petitioner's average weekly wage is $1,440.00. Petitioner's supervisor, Mr. Howard, testified that Petitioner customarily worked a 40-hour week unless the weather was inclement or work was slow. This corroborated Petitioner's testimony. Mr. Howard also testified that Petitioner customarily made $34.25 an hour, but indicated that there had since been a raise that would make his figure off by up to $1-2. The payroll history reviewed by Petitioner's supervisor does not show Petitioner's hourly rate. (AT, p. 31). The payroll sheet also does not show the number of days Petitioner worked during the work week; wage and days worked are key variables in determining the average weekly wage of a claimant in a profession with a varying work schedule such as construction. *See Sylvester v. Industrial Comm'n*, 197 Ill.2d 225, 765 N.E.2d 822 (2001). Therefore, the Arbitrator finds Mr. Howard's testimony concerning what Petitioner's average weekly wage was based on the payroll summary, or "what he had in front of him," to carry little weight. (AT, p. 32). Additionally, it is a well-known fact that computation of the average weekly wage for employees in the construction business can often result in a windfall to the claimant when the hours such an employee works is often variant on certain conditions. *Sylvester v. Industrial Comm'n*, 197 Ill.2d 225, 765 N.E.2d 822 (2001). Since Respondent failed to provide documented evidence of Petitioner's wage and number of days worked, the Arbitrator relies on the testimony in the record concerning the number of hours worked, i.e., 40.

With regard to Petitioner's hourly wage, Respondent chose to pay Petitioner benefits based on an average weekly wage of $1,440.00, $36 per hour times 40 hours per week. (AT, p. 5). This wage is supported by the testimony of Petitioner's supervisor, who stated that Petitioner's income after the raise would be around the same amount. (AT, pp. 11-12). Based upon the foregoing, the Arbitrator finds that Petitioner's average weekly wage is $1,440.00.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; and

Issue (K): Is Petitioner entitled to any prospective medical care?

The Arbitrator finds that the medical care and treatment provided to Petitioner was reasonable and necessary, and Petitioner is entitled to past and prospective medical care.

Petitioner is entitled to recover reasonable medical expenses that are causally related to the accident and that are required to diagnose, relieve, or cure the effects of his injury, and such care is unlimited under the Act. *F & B Mfg. Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (1st Dist. 2001); *Efengee Electrical Supply Co. v. Industrial Comm'n*, 36 Ill.2d 450, 223 N.E.2d 135 (1967).

Petitioner has undergone exhaustive physical therapy and injections, and has tried numerous prescription and non-prescription steroidal/non-steroidal medications in an attempt to alleviate his symptoms, to no avail. Dr. Raskas has recommended surgery. Even Respondent's expert, Dr. Wilkey, stated that if non-steroidal medication, physical therapy, and work hardening failed, surgery may be indicated. Therefore, the Arbitrator finds that Petitioner is entitled to further care under the Act. Since all of Petitioner's treatment has been sought in order to diagnose, relieve, or cure the effects of his injury, Respondent shall be liable for all of the medical bills contained in Petitioner's Exhibit 1, totaling $110,666.50, and subject to the medical fee schedule, Section 8.2 of the Act. If Petitioner's group health carrier requests reimbursement, Respondent shall indemnify and hold Petitioner's harmless.

Issue (L): What temporary benefits are in dispute? (TTD)

The Arbitrator finds that Petitioner is entitled to temporary total disability (TTD) benefits of $960/week for 65 1/7 weeks, commencing July 6, 2011 through October 3, 2012 (the date of accident to the date of hearing), as no physician at any time released Petitioner back to work. Respondent is entitled to a credit for all amounts previously paid.

This award in no instance shall be a bar to a further hearing for determination of a further amount of temporary total compensation, medical benefits and/or compensation for permanent disability.

Issue (O): Did Petitioner exceed his choice of physicians under Section 8(a) of the Act?

The Arbitrator finds that Petitioner did not exceed his choice of physicians under Section 8(a) of the Act. Petitioner's first choice of physician was Dr. David Raskas.

The Arbitrator finds Petitioner to be a credible witness. Petitioner consistently and unequivocally testified that his supervisor, Mr. Howard, chose to take him to Dr. Althardt, and that he felt that he was required to do as his boss instructed. Petitioner testified that he specifically requested to go to the Greenville Hospital Emergency Room, and his supervisor replied, "let's go here," meaning Althardt Chiropractic Clinic. Petitioner's supervisor, however, initially testified that Petitioner did not specifically state where he wanted to go for treatment, but he later testified that Petitioner is the one who decided to go to the chiropractor. The Arbitrator places more weight on the testimony of Petitioner in this regard, and finds that Dr. Althardt was not Petitioner's choice of physician.

The Arbitrator also finds that Petitioner's treatment at Greenville Regional Hospital constituted emergent care. Petitioner testified that he felt nearly paralyzed with pain following the accident, and that Dr. Althardt's treatment provided no relief. Thus, Petitioner went to Greenville Hospital Emergency Room 3 days after his accident, which resulted in an MRI being performed 3 days later. Normally, an emergency room visit on or near the date of injury is not considered a choice of treatment. *See Catron v. RA-CO Security Services*, 01 IIC 494 (2001); *Sorto v. Yellow Transportation*, 09 IWCC 668 (2009). In *Sorto*, the Commission considered the claimant's visit to the emergency room two days following the date of accident to be his first choice of physicians under Section 8(a)'s "Two Physician Rule" because no evidence was provided that this visit to the emergency room was for emergent care. In the case at bar, the evidence indicates that Petitioner was not getting relief from the chiropractic care, and presented to the emergency room three days post-accident because his pain became "worse."

Although the emergency room is not the first facility in which Petitioner received treatment, there is no stipulation in the Act that such care is only considered emergent when it is the first or primary place of treatment; the Act provides that employers are liable for "all first aid *and* emergency treatment." 820 ILCS 305/8(a). (emphasis added). *See also Bonin v. Airline Towing, Inc.*, 09 IWCC 1194 (2009) (holding both of the claimant's separate visits to different emergency rooms to constitute emergent care and not choices under the Act). Dr. Sola also does not constitute a choice of physician, since Petitioner was referred to him by the emergency room. (AT, p. 42; PX 4, Greenville Regional Hospital, 7/8/11 [prescription slip]). The Commission held in *Winfield v. Charter Communications*, 12 IWCC 0321 (2012), that emergency room referrals are not classified as choices. Consequently, even if Petitioner had chosen to see Dr. Althardt, Petitioner's treatment with Dr. Raskas would only constitute his second choice, and not his third. All subsequent providers were referrals from Dr. Raskas, and thus within Petitioner's choices allotted within the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Loren D. Pettit,

Petitioner,

vs.

NO: 12 WC 42976

Springfield Police Department,

14IWCC0020

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of the amount of compensation awarded to Petitioner for disfigurement under §8(c) of the Act and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. At arbitration, Petitioner testified that on November 9, 2012, his left forearm was lacerated during a struggle with a perpetrator. Petitioner's left forearm bore a narrow scar measuring approximately three and a half inches in length. The parties did not request a written decision to include the Arbitrator's findings of fact and conclusions of law. On June 27, 2013, the Arbitrator awarded eleven weeks of disfigurement benefits under §8(c). Respondent subsequently sought review of the amount of compensation and on December 18, 2013 the parties appeared at oral arguments and Petitioner's left forearm scar was examined by the Commission. After considering the entire record and the seriousness of Petitioner's disfigurement, the Commission hereby modifies the award of the Arbitrator and finds that Petitioner is entitled to six weeks of compensation under §8(c) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $712.55 per week for a period of six weeks, because Petitioner's injuries caused disfigurement under §8(c) of the Act.

141WCC0020

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 17 2014
RWW/plv
o-12/18/13
46

Ruth W. White

Charles J. DeVriendt

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PETTIT, LOREN D
Employee/Petitioner

Case# **12WC042976**

SPRINGFIELD POLICE DEPT
Employer/Respondent

14IWCC0020

On 6/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1157 DELANO LAW OFFICES LLC
CHARLES H DELANO IV
1 S E OLD STATE CAPITOL PLZ
SPRINGFIELD, IL 62701

0332 LIVINGSTONE MUELLER ET AL
DENNIS S O'BRIEN
P O BOX 335
SPRINGFIELD, IL 62705

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

LOREN D. PETTIT
Employee/Petitioner

Case # 12 WC 42976

v.

14IWCC0020

SPRINGFIELD POLICE DEPT.
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti** , Arbitrator of the Commission, in the city of **Springfield**, on **June 13, 2013**. By stipulation, the parties agree:

On the date of accident, **November 9, 2012**, Respondent was operating under and subject to the provisions of the
Act.

On this date, the relationship of employee and employer did exist between the Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to the Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **$66,812.72**; and the average weekly wage was **$1,284.86**.

At the time of injury, the Petitioner was **38** years of age, ***single*** with ***one*** dependent child.

Petitioner did not require any medical treatment as a result of this injury.

Respondent shall be given a credit of $0 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of **$0**.

Because the parties did not request a decision with findings of fact and conclusions of law, the Arbitrator is issuing a short decision form, pursuant to Section 19(b) of the Act.

ORDER

Respondent shall pay Petitioner the sum of $712.55/week for a further period of 11 weeks, as provided in Section 8(c) of the Act, because the injuries sustained caused the disfigurement of the arm.

Respondent shall pay Petitioner compensation that has accrued from November 9, 2012 through June 13, 2013, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of arbitrator

06/19/2013
Date

JUN 27 2013